

APPENDIX  
Volume I

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Supreme Court of the United States

OCTOBER TERM, 1968

No. 624

CLYDE A. PERKINS, *Petitioner,*

v.

STANDARD OIL COMPANY OF CALIFORNIA, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 3, 1968  
CERTIORARI GRANTED JANUARY 14, 1969



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## APPENDIX

### I. Relevant Docket Entries

Date                      Proceedings

1959                      [United States District Court for the Western  
District of Washington, Northern Division]

Mar. 2—Filed Complaint with Demand for Jury Trial.

Sept. 22—Mailed original file with certified copy of order  
for transfer to Clerk, U.S. District Court, Portland,  
Oregon.

[United States District Court for the District of  
Oregon]

Sept. 23—Received and Filed record from Western Dis-  
trict of Washington, Northern Division.

1960

Jan. 11—Record of hearing on deft's Motion to dismiss and  
on Pltf's motion for leave to join Lee Powell, Harris  
Oil Company and Harris Distributing Company as par-  
ties plaintiff; Entered Order taking under advisement.

Feb. 29—Record of Opinion; Entered Order that same be  
filed (Civil 70-59)

Mar. 18—Filed Deft's Motion to strike amended complaint,  
or, in the alternative, to dismiss.

Apr. 4—Entered order allowing pltf to file amended com-  
plaint.

Apr. 4—Filed Amended Complaint, adding defts Harris Oil Company, a corp., Harris Distributing Company, a corporation and Lee Powell, and demand for jury trial.

Apr. 13—Filed and entered order that deft. Standard Oil Co. of Calif. have to and including April 23, 1960 within which to answer (on stipulation).

Apr. 22—Filed Answer of deft. Standard Oil Co. of Calif. to amended complaint.

May 12—Filed answer of deft. Lee Powell to amended complaint.

May 20—Filed answer of defts. Harris Oil Co. and Harris Distributing Co. to amended complaint.

1961

May 18—Filed pltf's motion for permission to file amended complaint, joining Perkins Oil Co. of Wash. and Perkins Oil Co. of Oregon as additional party pltf.

June 11—Entered order allowing motion to file amended complaint and pltf's counsel to file amended complaint within 10 days.

June 25—Filed Second Amended Complaint and Request for Jury Trial.

July 3—Filed motion of deft. Standard Oil Co. of Calif. to dismiss.

1962

July 9—Filed Answer of deft. Standard Oil Co. of Calif. to second amended complaint.

Aug. 7—Filed and Entered Order dated August 6, 1962, dismissing second amended complaint of plaintiffs Perkins Oil Company of Oregon, and Perkins Oil Company of Washington.

Oct. 22—Entered order allowing motion to file amended complaint.

Nov. 26—Filed order permitting pltf. to file an amended complaint (microfilmed 10/31/62).

Dec. 7—Filed third amended complaint and request for jury trial.

Dec. 17—Filed motion of deft. Standard Oil Co. of Calif. to dismiss the third amended complaint and the second cause of action therein or, in the alternative for an order striking the same.

1963

Feb. 6—Filed and entered order dismissing second cause of action contained in pltf's third amended complaint, further, that deft. Standard Oil Co. have 15 days from date hereof within which to answer the 1st cause of action contained in third amended complaint.

Mar. 14—Filed fourth amended complaint and request for jury trial.

Mar. 21—Filed Motion of deft. Standard Oil Co. of Calif. to dismiss the Fourth amended complaint and the second cause of action therein, or, in the alternative for an order striking the same.

Apr. 10—Filed and entered Memorandum Order dismissing pltf's second cause of action and his fourth amended complaint without leave to further plead.

June 17—Record of Pretrial Conf.

June 21—Record of defts' motion for a 6 months continuance; entered order denying motion.

July 10—Record of pretrial conf.

July 15—Record of Jury Trial; jury empanelled and sworn.

Aug. 8—Entered Order granting Defts. renewed Motion for mistrial. Entered Order discharging jury from further consideration of case. Entered Order setting for retrial Monday, October 21, 1963.

Aug. 13—Entered Order that Pretrial Conference upon Original and supplemental contentions is set for Friday, Oct. 18th at 9:00 a.m.

Oct. 17—Filed Notice of Appearance of the firm of Bonyhadi & Hall as counsel for pltf.

Oct. 18—Entered order resetting trial of Oct. 28, 1963 to Nov. 5, 1963.

Nov. 4—Record of jury trial.

Nov. 4—Record of pretrial conf.

Dec. 17—Record of deft's motion for directed verdict; entered order denying motion.

Dec. 20—Record of Verdicts in favor of pltf. in the amt. of \$336,404.57, special verdict and special interrogatories.

Dec. 20—Entered order that the Verdict be tripled under the law.

Dec. 20—Filed GENERAL VERDICT for pltf. against deft. Standard Oil Co. of Calif. in the amt. of \$336,404.57.

Dec. 20—Filed SPECIAL VERDICTS FOR PLTF. against the deft. Standard Oil Co. of Calif. in the amt. of \$336,404.57.

Dec. 20—Filed SPECIAL INTERROGATORIES TO THE JURY.

Dec. 20—Entered JUDGMENT for pltf. against Standard Oil Co. of Calif. for the sum of One Million Nine Thousand Two Hundred Thirteen and 71/100 Dollars, together with costs; it is further ordered that issue of award of reasonable atty's fees for the pltf. in this cause is segregated and reserved for further order.

Dec. 23—Filed Judgment for pltf. against Standard Oil Co. of Calif. for the sum of \$1,009,213.71 together with costs; it is further ordered that issue of award of reasonable atty's fees for the pltf. in this cause is segregated and reserved for further order.

1964

Jan. 2—Entered order staying judgment.



Apr. 3—Filed and entered order denying deft's motions for new trial and judgment notwithstanding the verdict.

Apr. 24—Filed Notice of Appeal by defendant Standard Oil Company (served).

May 18—Filed and entered award of \$289,000 as reasonable attys' fees for pltf. to be paid by deft.

May 25—Entered order allowing and denying certain items in cost bill.

May 28—Filed notice of appeal by deft. Standard Oil Co. of Calif.—served.

June 8—Filed and entered order allowing costs incurred in connection with litigation in amt. of \$2,568.21 and further that the objections lodged by deft. Standard with respect to all remaining items of costs claimed by pltf. are sustained (entered in lien docket Vol. 5, Page 195).

July 20—Mailed clerk's record 6 volumes (original only) to Court of Appeals. All exhibits and seven (7) boxes of reporter's transcripts of proceedings (originals and two copies) picked up by O'Neill Transfer Company for packing and shipping.

[United States Court of Appeals for the Ninth Circuit]

1965

Feb. 5—Filed app & order (C) ext time to Feb. 23, file appellants brief; etc.

Feb. 18—FILED 20 PRINTED APPELLANTS BRIEF, entd. app of counsel.

Apr. 23—FILED 20 PRINTED BRIEF OF THE APPELLEE PERKINS, entd. app.

June 1—FILED 20 REPLY BRIEF FOR APPELLANT.

June 8—CAUSE ARG. TO K & D AND UPON STIP. SUBMITTED TO H K & D.

1967

Nov. 2—ORDERED OPINION (KOELSCH) FILED & JUDG. FILED & ENT. ACCD'L.

Nov. 2—Filed opinion. Judg. of DC Rev. & cause remd. for a new trial.

Nov. 2—Filed & ent. judgment.

1968

Jan. 31—Recvd. orig. & 3 of appellees alternative motion for clarification.

Jan. 31—FILED 20 OF APPELLEES PETITION FOR REHEARING.

May 13—FILED 20 OF APPELLANTS RESPONSE TO PETITION FOR REHEARING

June 3—FILED 20 ANSWER OF APPELLEE TO RESPONSE TO PETITION FOR REHEARING.

July 9—Filed order (H K & D) denying petition of appellee for rehearing.

July 9—Filed order (H K & D) amending opinion in response to appellee motion for clarification.

**II. Pleadings**

---

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

CLYDE PERKINS, *Plaintiff,*

v.

STANDARD OIL COMPANY OF CALIFORNIA, a corporation;  
HARRIS OIL COMPANY, a corporation; HARRIS DISTRIBUTING COMPANY, a corporation; and LEE POWELL,  
*Defendants.*

**A. Fourth Amended Complaint and Request for Jury Trial**

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, plaintiff complains and alleges as follows:

**I**

**JURISDICTION**

Jurisdiction is founded upon the Clayton Act (38 Stat 730, Oct. 15, 1914, Ch. 323, Title 15 U.S.C. § 13), as amended by the Robinson-Patman Act (June 19, 1936, Ch. 592, § 1, 49 Stat 1526) and other amendments, and upon 15 U.S.C. § 15 and 28 U.S.C. § 1331.

**II**

**VENUE**

Venue is founded on U.S.C. Title 28, § 1391, and the fact that defendants Standard Oil Company of California, Harris Oil Company and Harris Distributing Company are corporations licensed and doing business within this Judicial District.

## III

## PARTIES

A. Plaintiff, Clyde Perkins, is an individual citizen and inhabitant of the State of Washington who for many years was a jobber of defendant Standard Oil's petroleum products in portions of Oregon and Washington, pursuant to a written contract executed by plaintiff, Clyde Perkins, and defendant.

B. Defendant Standard Oil Company of California is a corporation, organized and existing under the laws of the State of Delaware, which maintains offices and places of business within this state and Judicial District.

C. Defendant Lee Powell is a citizen and resident of the State of Washington, with his office and place of business in the State of Oregon, and engaged in the doing of his business within Oregon and Washington.

D. Defendants Harris Oil Company and Harris Distributing Company are Oregon corporations, engaged in the doing of their business in Oregon and Washington.

## IV

## DEFINITIONS

The term "Defendant" as used in this complaint shall include all subsidiaries and other affiliated companies which it controls or operates. It shall also include all acts committed by its employees, servants, agents or representatives acting within the scope of their employment for defendant.

## V

## AGREEMENTS

On or about March 9, 1945, an agreement was reached between defendant Standard Oil Company of California, Inc. and plaintiff, Clyde Perkins, and two other jobbers,

under which plaintiff, Clyde Perkins, and two others became jobbers for the distribution of its petroleum products in portions of Oregon and Washington in the manner provided therein. A true copy of this agreement was attached to the original complaint and by reference is made a part of this complaint as though fully set forth herein. It was contemplated by the parties that these three jobbers would in turn subdivide the areas into specified regions between themselves, and such an agreement was achieved. A true copy of this allocation was attached to the original complaint and by reference is made a part of this complaint as though fully set forth herein. Similar agreements were executed in 1953 and 1956 between plaintiff, Clyde Perkins, and defendant Standard Oil, and two other jobbers, and similar allocations made between the jobbers.

## VI

### COMMERCE

Defendant Standard Oil Company of California, Inc. is the largest manufacturer of petroleum products on the Pacific Coast, with extensive investments in refineries, pipe lines, shipping, plants, retail outlets throughout the Pacific Coast. Petroleum products are produced and obtained in California and other foreign and domestic locations and are transported to the defendant's refineries, frequently in its own pipe lines or in trucks or tankers, where it is then refined and shipped to other states by means of tankers, trucks, pipe lines and other methods of conveyance, including extensive shipments to the State of Washington. Frequently it is stored in its bulk plants for comparatively short periods of time. It is then delivered to its jobber or retail outlets, or it is sold directly to consumers. Defendant owns a large number of retail outlets and these retail outlets make sales directly to consumers. That the production, refining, shipment, temporary storage, delivery and sales to consumers are all



in the stream of interstate commerce and are mere conduits for the eventual delivery and sale of its products to consumers. Shipments of its products to plaintiff, Clyde Perkins, were in fulfillment of the terms and conditions of the various contracts signed between plaintiff, Clyde Perkins, and defendant Standard Oil, which obliged the plaintiff, Clyde Perkins, to use his best efforts to purchase the quotas designated therein. Delivery of products to plaintiff, Clyde Perkins, by defendant Standard Oil was a continuous, regular and relatively uninterrupted and uniform delivery and within the stream of interstate commerce during the period of the agreements referred to, and it was intended that its petroleum products would eventually be delivered to gas service stations and other outlets within the states of Washington and Oregon. Plaintiff was a comparatively large jobber and under the agreements executed in 1956, it was provided that plaintiff and the other two jobbers designated therein would use their best efforts to sell products in the following amounts:

S. O. Jobber, gasoline, first brand	8,000,000
S. O. Jobber, gasoline, second brand	12,000,000
S. O. Jobber, kerosene	100,000
S. O. Jobber, stove oil	6,000,000
S. O. Jobber, furnace oil	9,000,000
S. O. Jobber, Diesel fuel	6,000,000
S. O. Jobber, automotive Diesel fuel	100,000

with an automatic adjustment on the first day of each ensuing contract year on the basis of 110% of Jobber's actual replacement deliveries during the preceding contract year.

All purchases of petroleum products within the period of this agreement were made by plaintiff directly from defendant Standard Oil and in the stream of interstate commerce. That said purchases and deliveries directly

affect the total volume of petroleum products shipped into the States of Washington and Oregon, and affect, alter and modify the total volumes shipped and delivered in interstate commerce.

## VII

### UNLAWFUL DISCRIMINATION

Commencing approximately March 1, 1955, the exact date being unknown to the plaintiff, Clyde Perkins, and within the knowledge of defendant Standard Oil, and continuing thereafter up to the end of the contract, August 31, 1958, defendant Standard Oil unlawfully discriminated against plaintiff in the course of interstate commerce in the sale of its petroleum commodities of like grade and quality by granting discounts, allowances, payments, services, facilities, rebates and lower prices to other purchasers who were engaged in direct competition with plaintiff and sold its products to such purchasers on more favorable terms than it sold to plaintiff, and these favorable prices, payments, services, facilities, allowances, discounts and things of value were not made available to plaintiff. Such discriminatory purchases were made in interstate commerce, and the commodities were sold for use, consumption and resale within the United States.

## VIII

### EFFECT OF DISCRIMINATIONS

As a direct and proximate result of these acts of discrimination, plaintiff has sustained a severe and substantial loss of his retail customers and a severe and substantial loss in income and profits, and it was extremely difficult to compete with other jobbers, distributors and retailers who were recipients of the unlawful discrimination. The effect of these discriminations was to substantially lessen competition within this industry and to injure, destroy and prevent plaintiff from competing with

other jobbers and distributors similarly situated. The unjust and unlawful differentials referred to were not attributable to differences in the cost of manufacture, sales or delivery.

## IX

### DAMAGES

As a direct and proximate result of said acts and discriminations referred to above, plaintiff, Clyde Perkins, has been damaged to the extent of approximately One Hundred Ninety-three Thousand One Hundred Six Dollars and Sixty-three Cents (\$193,106.63), which represents the amount of allowances, rebates, facilities, services, lower prices, discounts and payments he would have received had plaintiff been treated in the same fashion as other competitors of like grade and quality, and has suffered a further loss of approximately Four Hundred Twelve Thousand Thirty-four Dollars and Seventy-six Cents (\$412,034.76) in lost profits representing additional products which he was unable to sell because of said acts and discriminations. That the exact amount of the discriminatory allowances, rebates, lower prices, discounts and payments given to competitors and not extended to plaintiff is within the knowledge of defendant Standard Oil. Plaintiff requests the right to amend this complaint in accordance with the facts as they develop. That the above amounts should be trebled as provided by law, making a total of One Million Eight Hundred Fifteen Thousand Four Hundred Twenty-four Dollars and Seventeen Cents (\$1,815,424.17).

## X

### ATTORNEYS' FEES

That as a direct result of the acts of discrimination referred to above by defendant Standard Oil, plaintiff has been obliged to employ the undersigned attorneys for the

purpose of bringing this action and the sum of One Hundred Thousand Dollars (\$100,000.00) is a reasonable sum to be awarded to plaintiff as and for reasonable attorneys' fees incurred herein.

## XI

### INTERESTS OF OTHER DEFENDANTS

Lee Powell, Harris Oil Company and Harris Distributing Company have certain rights under the contracts as aforesaid to the extent set forth in said agreements, but said parties decline to bring this action because they are presently doing business with defendant Standard Oil Company of California, Inc.

. . . . .

FOR A SECOND AND FURTHER CAUSE OF ACTION AGAINST DEFENDANTS, plaintiff complains and alleges as follows:

## I

Plaintiff repeats and realleges all of the allegations and averments contained in paragraphs II, III, IV, V and XI of his first cause of action herein, as though fully set forth.

## II

### JURISDICTION

Jurisdiction is founded upon the Sherman Antitrust Act, Ch. 647, 26 Stat 209, July 2, 1890, Title 15 U.S.C. § 1-8, and upon subsequent amendments thereto.

## III

### STANDARD OIL COMPANY OF CALIFORNIA

Standard Oil Company of California is one of the largest integrated petroleum organizations in the world, engaging in all phases of petroleum activities. In the Western Hemisphere it presently maintains in excess of

23,000 retail service stations and in excess of 1800 wholesale plants. It is presently the fifth largest domestic refining company, with refinery runs in excess of 331,359,000 barrels. It also has proven crude oil and natural gas liquid reserves estimated in excess of 18,319,000,000 barrels. It also owns or has substantial interest in 32 natural gasoline and cycling plants and natural gas reserves in excess of 7,000,000,000 cubic feet. It presently maintains refineries at Richmond, California; El Segundo, California; Bakersfield, California; El Paso, Texas; Salt Lake City, Utah; Perth Amboy, New Jersey; Baltimore, Maryland; Cincinnati, Ohio; Mobile, Alabama; St. Johns, New Brunswick; Portland, Oregon; Vancouver, British Columbia; Honolulu, Hawaii; and Lake Maracaibo, Venezuela, with a daily capacity in excess of 700,000 barrels. It holds under lease in excess of 100,000,000 acres, with leases in the United States, Canada, Venezuela, Guatemala, Bolivia, Trinidad, the Bahamas, Colombia, Jamaica, Libya, the Philippines, Turkey, Norway, Nigeria, French Sahara, Spain, Spanish Sahara and Western Australia. At the present time Standard has more than 10,000 producing oil wells in the United States alone, with the bulk of these concentrated in either California, Louisiana, or Texas. Standard operates not only under its own name, but by and through various wholly owned subsidiaries. That some of its wholly owned subsidiaries are as follows:

Standard Oil Company of California; Western Operations, Inc.; American Bitumals & Asphalt Company; California Chemical Company; California Commercial Company; California Oil Company; The California Company; Standard Oil Company of Texas; California Research Corporation; California Shipping Company; California Tanker Company; Cal-Ky Pipe Line Company; Chevron Oil Company; Lomita Gasoline Company; Pacific Oil Company; Pasotex Pipe Line Company; Salt Lake Pipe Line Company; Standard Oil Company (Kentucky); Standard Pipe Line Company; Standard Stations, Inc.; Canadian



Bitumals Company Limited; Standard Oil Company of British Columbia Limited; The California Standard Company; Bolivia California Petroleum Company; California Exploration Company; Compania Guatemala California De Petroleo; Compania Petrolera California Companies; Richmond Exploration Company; Richmond Petroleum Company of Colombia; Bahama California Oil Company; Bahama California Oil Company Limited; Compania Petrolera California, Inc.; Dominion Oil Limited; Iran California Oil Company; California Asiatic Oil Company; California Chemical International, Inc.; California Crude Sales Company; California Transport Corporation; International Bitumen Emulsions Corporation; California Commercial Company; Salt Lake Pipe Line Co.; Bahrain Petroleum Company.

In addition, together with Texaco, Standard holds a fifty percent interest in the Caltex group of companies, which companies are engaged in exploration, production, refining, marketing and transportation in more than seventy countries, and which itself employs in excess of 40,000 persons. Caltex owns or has an interest in more than seventeen refineries in twelve countries and maintains one of the largest tanker fleets in the world. Caltex presently owns in excess of sixty vessels, and is operating an additional number of approximately the same size under charter. Standard also, together with Standard Oil of New Jersey, Standard Oil of New York, and Texaco, owns the Arabian American Oil Company which has a daily production in excess of 1,000,000 barrels per day, and which holds a concession in excess of 200,000,000 acres in Saudi Arabia. Arabian American Oil Company is engaged in the exploration, production, refining and sale of crude oil and products, with a daily production in excess of 1,000,000 barrels.

Through a subsidiary, Standard also holds a seven percent interest in the Iranian oil consortium, one of the

largest sources of crude oil in the world. Numerous other major domestic petroleum companies have a proprietary interest in the Iranian consortium. Standard also owns 63.64% of the Huntington Beach Company, which company owns land in the Huntington Beach area in California, consisting primarily of property which is leased for petroleum production, and from which substantial products are obtained. The balance of the stock in Huntington Beach Oil Company is owned by Signal Oil & Gas Company.

In addition, in its own right, defendant Standard owns in excess of eighteen tankers and operates others under charter, which vessels are engaged primarily in transporting crude oil from California terminals to refineries on the Pacific Coast, and from terminals on the Gulf Coast, and in South America to refineries on the East Coast or inter-coastal, and from California refineries to terminals on the Pacific Coast, Central America, Alaska, Hawaii, and to the Mid-Pacific. In addition, Standard maintains a foreign sea-going fleet of approximately ten tankers, which it or one of its subsidiaries owns, and charters approximately twenty more. Standard also has approximately 2,000 miles of oil pipe lines, with the largest carrying petroleum products from Salt Lake into the Spokane, Washington, area.

Standard maintains extensive harbor facilities along the Pacific Coast, Hawaii and Alaska for the loading and unloading of crude oil and products, with facilities in Portland and Seattle, among other areas. Standard Oil Company of California was initially organized in 1926, succeeding to the business of Standard Oil Company and Pacific Oil Company. Throughout its corporate history, defendant Standard Oil Company of California has followed an aggressive and expansionist policy, and except for periods of economic maladjustment, has steadily increased its production, sales, holdings and assets in all phases of the petroleum industry in an effort to achieve maximum growth. Standard has been particularly aggressive in the seven

Western states, consisting of California, Oregon, Washington, Nevada, Idaho, Arizona and Utah, and at the present time is the largest single marketer in virtually all phases of the petroleum industry in that section. In recent years, Standard has increased its sales to more than twenty percent of the overall gallonage sold in each of these states. In an effort to further its expansionist design, it acquired in 1947 all retail outlets owned by the Signal Oil and Gas Company which operate under the name "Signal". However, Standard declined to change the name under which the Signal stations sold their products in an effort to take advantage of the Signal tradename, and in a further effort to capture potential buyers of petroleum products, who for one reason or another declined to patronize the Standard stations. Standard also markets its products through numerous retail outlets which have the appearance of independent stations. In many cases Standard insists that there be no indication that the products are Standard products. Recently, Standard Oil Company has acquired all marketing facilities and all other facilities of Standard Oil Company of Kentucky, which company had previously been the leading marketer in Alabama, Florida, Georgia, Kentucky and Mississippi. As a result of this last acquisition, Standard acquired additional crude oil reserves, production and marketing and marine facilities of all types. Standard has expanded its interests into the petro-chemical field with sales in 1961 in excess of \$150,000,000.00.

Standard is also a joint owner of the Irving Oil Company, which company markets its products in more than 3,000 retail outlets, again without indication that the products are those of Standard Oil.

Standard also cooperates with numerous other major oil companies in conducting exploratory work throughout the world and also exchanges products with them to a considerable degree. For example, Standard has a 50-50 agreement with Richfield Oil Company for an 834,000 acre development

in Kenai Basin, Alaska. Both Cities Service Company and Sinclair Oil Corporation have extensive stock ownerships in Richfield Oil Corporation. Neither of the latter companies have seen fit to enter into competition to any material degree in the Pacific Northwest in competition with Richfield, or for that matter with Standard in the same region.

#### IV

##### CO-CONSPIRATORS

Whenever the term "co-conspirator" is used in this complaint, it shall refer to the following corporations:

Standard Oil Company of California; Standard Stations, Inc.; Huntington Beach Company; Standard Oil Company of California Western Operations, Inc.; and other corporations whose names are not presently known to plaintiff.

#### V

##### COMMERCE

Defendant Standard Oil Company of California obtains its crude oil from sources throughout the world, including Arabia, Iran, Venezuela, Sumatra, Bahrain Island, Gulf of Mexico, California, and many other states and countries. The products thus obtained are transported to the defendant's refinery—in many cases frequently by its own pipe lines or in trucks or tankers which are owned, leased or chartered by defendant Standard. These refineries are located throughout the world. Virtually all of these refineries are located outside the States of Oregon and Washington, with the exception of a small refinery located in Portland, Oregon, having a capacity of only 7,000 barrels a day, and engaged primarily in refining asphalt, and a chemical plant in Kennewick, Washington. Frequently the products thus obtained from outside the States of Oregon and Washington are stored in bulk plants maintained by



defendant Standard for comparatively short periods of time. From these locations it is delivered to jobber and retail outlets, many of which are owned by defendant Standard and these retail outlets in turn make sales directly to consumers. The production, refining, shipment, temporary storage, delivery and sales to consumers are all in the stream of interstate commerce and are mere conduits for the eventual delivery and sale of its products to consumers. Shipments of its products to plaintiff, Clyde Perkins, were in fulfillment of the terms and conditions of various contracts signed between plaintiff, Clyde Perkins, and defendant Standard Oil, which obliged plaintiff, Clyde Perkins, to use his best efforts to purchase the quantities designated therein. Delivery of products to plaintiff, Clyde Perkins, by defendant Standard was a continuous, regular and relatively uninterrupted and uniform delivery and within the stream of interstate commerce during the period referred to in this complaint, and it was intended that its petroleum products would eventually be delivered to service stations and other outlets within the States of Oregon and Washington.

## VI

### CONSPIRACY TO MONOPOLIZE AND RESTRAIN

Commencing approximately in 1955, the exact date being unknown to plaintiff, Clyde Perkins, and within the knowledge of defendant Standard Oil, and continuing thereafter up to the end of the contract, August 31, 1958, between plaintiff and Standard Oil Company of California, the defendant Standard and co-conspirators named herein, together with other persons and corporations and companies unknown to plaintiff, have acted concertedly together through agreement, understanding and control, and in certain cases tacitly, and pursuant thereto have mutually adopted and conducted their businesses in accordance with common plans and programs, which defendant and each co-conspira-



tor has adopted in order to accomplish the following purposes and objectives, among others:

- (a) Control and regulate prices, and to substantially eliminate competition, and to restrain trade;
- (b) Monopolize, control and channelize distribution of petroleum products in interstate commerce, limit the type of business which might be engaged in by independent jobber and retail distributors, and to eliminate and control competition, and potential competitors, and in so doing, to attempt to monopolize;
- (c) To arbitrarily, unlawfully, unreasonably and knowingly raise, fix, control, set, stabilize and affect the price of petroleum products shipped in interstate commerce within the United States and in particular within Oregon and Washington;
- (d) To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress and eliminate competition between itself and other potential and actual competitors in the sale of petroleum products;
- (e) To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress and eliminate competition from any source in the sale of petroleum products within the States of Oregon and Washington;
- (f) To establish and maintain unreasonably high, excessive, monopolistic and noncompetitive prices for petroleum products shipped in interstate commerce as aforesaid into the States of Oregon and Washington.

## VII

### ACTIVITIES IN FURTHERANCE OF PLANS

To further the objectives of said conspiracy, defendant Standard, and the other co-conspirators, among other activities, have:

- (1) Systematically attempted to destroy the business of plaintiff, Clyde Perkins;

(2) Set up competing jobbers in the same area in which plaintiff operated despite their assurances this would not be done;

(3) Systematically discriminated with respect to price, terms, service, facilities, charges, allowances, payments, rebates, and discounts to other accounts who were in competition with plaintiff;

(4) Coerced plaintiff into reselling the commodities obtained from defendant Standard at prices which were dictated by Standard;

(5) Professed there were shortages of material and other supplies, but at the same time making it available to other competitors, and in certain cases making it available to outlets maintained, leased, or otherwise serviced by defendant Standard itself;

(6) Refused to permit plaintiff to expand into other areas;

(7) Refused to permit plaintiff to make sales in many instances within the territory which had been allocated by Standard to plaintiff;

(8) Refused to assist plaintiff during intervals of so-called price wars, while at the same time assisting competing accounts and assisting retail stations which Standard supplied directly;

(9) Appropriated customers which had been built up by plaintiff, Perkins, many times after considerable expense had been incurred by plaintiff;

(10) Required plaintiff to cease and desist from supplying certain accounts in an effort to appropriate business for itself, or in certain cases, making it available to favored competitors;

(11) Insisted that plaintiff drop certain other products which he was selling and which he obtained from other sources;

(12) Refused to sell products to plaintiff in certain instances, except upon the condition he purchase other products;

(13) Discouraged and prohibited plaintiff from taking on certain customers, even though said customers were within the area which had been established by the defendant;

(14) Extended subsidies and allowances to other competitors of plaintiff, while refusing the same sort of allowance or subsidy to plaintiff, Perkins;

(15) Adopted a policy of protecting some of its customers from competition, while refusing to extend the same sort of protection and insulation to plaintiff, Perkins;

(16) Bidded against plaintiff, Perkins, on many occasions;

(17) Granted additional territory to many competitors of plaintiff, but refusing to grant additional territory to plaintiff, and in many cases taking territory away from plaintiff without compensation;

(18) Made facilities available to favored competitors of plaintiff and permitted certain types of accounts to draw from numerous locations, thereby saving additional costs;

(19) Given long-term allowances in many cases to competitors of plaintiff, while at the same time making similar allowances only on a day-to-day basis to plaintiff, thereby making it difficult to compete with competitors receiving adjustments for a longer period;

(20) Leased certain facilities to jobbers similarly situated at nominal rates, but failed and refused to extend similar facilities to plaintiff;

(21) Lowered the percentage of margins which were available to plaintiff, with the knowledge the reduced margin would make it difficult, if not impossible, for him to continue in business;

(22) Created conditions which made it impossible economically for plaintiff to continue to operate with the full knowledge that he would thereby be forced and compelled to dispose of his business;

(23) Created conditions which made it impossible for plaintiff to sell, except on a forced sale basis and at a depressed valuation;

(24) Having thus created conditions necessitating a sale, defendant then attempted to block potential buyers of plaintiff's business, with the expectation he would lose the value of his investment which he had built up over many years in the petroleum industry;

(25) Encouraged price wars by allowances to stations which it supplied directly, while at the same time refusing to grant similar allowances to plaintiff's stations, and to plaintiff's retailers, with the knowledge that such conditions would make it extremely difficult to operate during such periods;

(26) Granted discriminatory allowances to favored competitors of plaintiff's for extended periods of time during periods of price war, thereby extending and prolonging the period of such warfare, and forcing the plaintiff to operate at a loss during such period of time;

(27) Acquired numerous wholesalers and retailers;

(28) Refused to allow plaintiff to market the products which he obtained from Standard under the actual brand names so that plaintiff was unable to market the products under their commonly accepted names, and was forced to advertise such products under different and unfamiliar names to the general public, and at the same time in refusing to grant or extend to plaintiff advertising allowances, while extending allowances of this nature to competitors of plaintiff;

(29) Promised plaintiff would be allowed to service certain areas and then declined and refused to permit him to do so;

(30) Taken certain areas from plaintiff on the promise that these areas would be compensated by other areas and then failing to live up to such commitment;

(31) Arbitrarily, unlawfully, unreasonably and knowingly raised, fixed, controlled; acted, stabilized and affected the price of petroleum products sold within the States of Oregon and Washington;

(32) Established and maintained unreasonably high, excessive, monopolistic and noncompetitive prices on petroleum products, or attempted to do so, within the States of Oregon and Washington by the attempt to eliminate Clyde Perkins as a potential competitor;

(33) Attempted to control the marketing and price policies maintained by plaintiff with respect to his accounts and his operations, as well as his methods of marketing petroleum products to the general public;

(34) Attempted to utilize plaintiff and his agents and associates for the purpose of fixing and stabilizing prices throughout the petroleum industry, and to contact other petroleum companies who would normally compete with Standard, in an effort to persuade them to raise their prices to the general public, and to other consuming accounts, and to otherwise fix and control prices and other conditions of sale or resale;

(35) Eliminate and suppressed other jobbers and retailers;

(36) Exerted pressure upon plaintiff to force him to control the activities of his customers;

(37) Prohibited plaintiff from informing the general public in many instances of the price of his products, and to eliminate competition with stations which they owned, leased or controlled.



## VIII

## EFFECT OF THE RESTRAINT

The effect of the aforesaid restraint and attempt to monopolize has been to restrain trade and commerce among the several states, and an attempt to monopolize a part of the trade or commerce among the several states.

## IX

## PLAINTIFF, CLYDE PERKINS

Plaintiff, Clyde Perkins, for many years has been a marketer of petroleum products. Prior to 1945, after many years in the petroleum business, he had built up a substantial business with widespread marketing facilities throughout the Pacific Northwest. In 1945, together with Robert Harris and Lee Powell, it was proposed they construct their own terminal in the Portland area, which would permit them to receive products directly in the Pacific Northwest, rather than to rely upon the facilities of other petroleum companies. Defendant Standard Oil Company of California having obtained information of these plans and fearing potential competition, persuaded Perkins, Powell and Harris to enter into an exclusive arrangement with them under which Perkins, Powell and Harris acquired all of their products from defendant Standard Oil Company at prices which were to be posted by defendant Standard, less certain adjustments. Defendant Standard allocated most of southwestern Washington and most of western Oregon to Perkins, Powell and Harris, and in turn it was expected that the three jobbers would subdivide the area among themselves. Such an agreement was achieved and plaintiff became individually responsible, with the approval of defendant Standard, for most of southwestern Washington and for considerable territory within Oregon as well. From 1945 until approximately 1952, plaintiff's business expanded rapidly and he was able to sell all of

the products which were made available to him by defendant Standard and in many instances requested additional gallonage which was not made available by defendant Standard. Plaintiff's business acquired a certain esteem and respect throughout the area which he serviced and would have continued to grow and expand in a normal fashion had defendant Standard not embarked upon a conspiracy to restrain trade and to monopolize, which is outlined above.

## X

### RESULT OF DEFENDANT'S UNLAWFUL ACTS

As a direct result of defendant's actions and those of defendant's co-conspirators, plaintiff was unable in any fashion to dispose of the jobber portion of his business and was able to salvage only a small fraction of his retail business through leases. As a result of said action on the part of defendant Standard, plaintiff has been damaged in the sum of One Million Dollars (\$1,000,000.00).

## XI

### VIOLATION OF SHERMAN ACT

The acts of the defendant and its co-conspirators, as set forth hereinabove, have constituted and do constitute an unlawful combination in restraint of trade and a monopoly, or an attempt to monopolize, interstate trade and commerce, in violation of the Sherman Act (15 U.S.C.A. § 1 and 2).

## XII

### TREBLE DAMAGES

Plaintiff has been damaged in his business and property and by reason of the unlawful conduct and acts of the defendant Standard and that, under the provisions of an Act of Congress of the United States; approved October

15, 1914, 38 Stat. 731 (U.S.C.A. Title 15, § 15), he is entitled to recovery of the defendant three-fold damages by him sustained and the costs of the suit and reasonable attorneys' fees in the sum of One Hundred Thousand Dollars (\$100,000.00).

### **XIII**

#### **CONCEALMENT**

Defendant Standard Oil Company of California has fraudulently concealed the facts giving rise to the cause of action set forth herein by the following:

- (a) suppressing information concerning such facts;
- (b) blocking and preventing plaintiff from gaining access to such information;
- (c) diverting plaintiff in his efforts to uncover the true facts;
- (d) falsely and repeatedly assuring plaintiff that such facts did not exist;
- (e) by refusing to answer plaintiff's inquiries;
- (f) by cloaking its activities under false and misleading labels;
- (g) by feigning lack of knowledge;
- (h) studiously concealing facts;
- (i) by attempting to rewrite depositions which had been faithfully recorded by Court Reporters in an effort to distort and alter the true facts to its own advantage;
- (j) by attempting to delay plaintiff.

Plaintiff has been obliged to uncover the actual facts by a painstaking, careful and time-consuming evaluation of evidence, most of which was obtained over strenuous objections by defendant Standard and which has come to light

within the past four years. Plaintiff has diligently attempted to bring these facts to light at an earlier stage, but has been frustrated in his efforts by defendant. Defendant is and has been well aware of the true facts as outlined in this cause of action. Defendant's artifices and false assurances have been solely responsible for the delay in uncovering the information.

WHEREFORE, plaintiff prays for judgment against defendant Standard Oil Company of California, Inc. in the sum of Six Hundred Five Thousand One Hundred Forty-one Dollars and Thirty-nine Cents (\$605,141.39), which sum should be trebled in the manner provided by law, and for the further sum of One Hundred Thousand Dollars (\$100,000.00) for the reasonable attorneys' fees herein on his first cause of action; and for the sum of One Million Dollars (\$1,000,000.00), which sum should be trebled in the manner provided by law, and for the further sum of One Hundred Thousand Dollars (\$100,000.00) for the reasonable attorneys' fees herein on his second cause of action; and for his costs and disbursements incurred herein; and with respect to defendants Lee Powell, Harris Oil Company and Harris Distributing Company, that they set forth the nature of their respective interests under the agreements referred to in this fourth amended complaint.

/s/ ROGER TILBURY  
Roger Tilbury

McMULLEN, SNIDER & McMULLEN

By .....  
*Attorney for Plaintiff.*

PLAINTIFF REQUESTS A JURY TRIAL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

**B. Answer of Defendant Standard Oil Company of California  
to Second Amended Complaint**

Defendant Standard Oil Company of California (herein called "this defendant"), by its attorneys, answers the Second Amended Complaint (herein called "complaint") filed by plaintiff Clyde Perkins as follows:

**FIRST DEFENSE**

The complaint fails to state a claim against this defendant upon which relief can be granted.

**SECOND DEFENSE**

This defendant admits, denies and avers as follows:

**I.**

This defendant admits that the complaint seeks to invoke the jurisdiction of the Court and to establish proper venue for this action on the basis of the provisions of the sections of the statutes referred to in paragraphs I and II of the complaint, and that it and Harris Oil Company and Harris Distributing Company are corporations licensed and doing business within this Judicial District; admits that Perkins Oil Company of Oregon and Perkins Oil Company of Washington are corporations engaged in business in the respective states. Except as so admitted, this defendant denies each and every allegation of paragraphs I and II of the complaint.

**II.**

This defendant admits and avers that plaintiff Clyde Perkins is an individual and is a citizen and inhabitant of the State of Washington; that between March 9, 1945, and



January 2, 1958, there was a business relationship between this defendant, as one party, and plaintiff Clyde Perkins and others, as the other party, said business relationship being embodied in the various written contracts described in paragraph IV of this answer; except as so admitted, this defendant denies each and every allegation of Part A of paragraph III of the complaint. This defendant admits and avers that it is a corporation organized and existing under the laws of the State of Delaware and that it maintains offices and places of business in the states of Washington and Oregon; except as so admitted, this defendant denies each and every allegation of Part B of paragraph III of the complaint. This defendant admits that Lee Powell is a citizen and resident of the State of Washington; except as so admitted, this defendant denies for lack of information each and every allegation of Part C of paragraph III of the complaint. This defendant admits that Harris Oil Company and Harris Distributing Company are Oregon corporations doing business in Oregon; except as so admitted this defendant denies each and every allegation of Part D of paragraph III of the complaint.

### III.

This defendant admits that plaintiff Clyde Perkins intends that certain words used in the complaint shall have the meanings specified in paragraph IV thereof. Except as so admitted, this defendant denies each and every allegation of paragraph IV of the complaint.

### IV.

This defendant admits and avers that the written contract dated March 9, 1945, attached to the complaint as Exhibit A, was executed by the parties thereto; that the term of said contract was extended by letter agreement (Exhibit 1 hereto) until September 13, 1953; that on April 6, 1953, said contract was terminated and a new five-year

contract was executed under which this defendant appointed plaintiff Clyde Perkins, Lee G. Powell and Dorothy M. Harris its consignee (Exhibit 2 hereto); that on July 16, 1956, the agreement of April 6, 1953, was terminated and a new contract was executed under which this defendant appointed plaintiff Clyde Perkins, Lee G. Powell, Harris Oil Company and Harris Distributing Company its consignee (Exhibit 3 hereto); and that the agreement of July 16, 1956, was mutually terminated as to plaintiff Clyde Perkins at his request as of January 24, 1958 (Exhibit 4 hereto). Except as so admitted, this defendant denies each and every allegation of paragraph V of the complaint.

#### V.

This defendant admits and avers that it and certain of its subsidiary companies are engaged in producing, purchasing, transporting and refining crude oil and in transporting and marketing gasoline and other refined products in various states of the United States; that under the terms of the contracts referred to in paragraph IV of this answer plaintiff Clyde Perkins and his jointly contracting partners undertook to use their best efforts to receive from this defendant and sell for this defendant stated quantities of specified refined petroleum products; that pursuant to said contracts this defendant supplied plaintiff Clyde Perkins and his jointly contracting partners with such specified products for such sales from this defendant's bulk storage facilities in the states of Washington and Oregon; that all refined products of the types so specified in said contracts which were sold during this period of time by and for this defendant in the states of Oregon and Washington were delivered from this defendant's storage facilities located in those states and had been held in storage in such storage facilities prior to delivery. Except as so admitted, this defendant denies each and every allegation of paragraph VI of the complaint.

## VI.

This defendant denies each and every allegation of paragraphs VII and VIII of the complaint.

## VII.

This defendant denies that plaintiff Clyde Perkins has been damaged in the sum stated in paragraph IX of the complaint, or in any other sum, or otherwise or at all, and denies each and every other allegation of said paragraph IX.

## VIII.

This defendant admits that plaintiff Clyde Perkins has employed Messrs. Roger G. Tilbury, Dean M. Alexander and Claude Snider for the purpose of bringing this action. Except as so admitted, this defendant denies each and every allegation in paragraph X of the complaint.

## IX.

This defendant admits and avers that Lee G. Powell, Harris Oil Company and Harris Distributing Company had joint rights with plaintiff Clyde Perkins in certain of the contracts described in paragraph IV of this answer. Except as so admitted, this defendant denies each and every allegation of paragraph XI of the complaint.

## X.

This defendant admits that Perkins Oil Company of Oregon and Perkins Oil Company of Washington are corporations. Except as admitted, this defendant denies each and every allegation of paragraph XII of the complaint.

## THIRD DEFENSE

Plaintiff Clyde Perkins' claim is based on his relationship to this defendant under certain of the contracts described in paragraph IV of the SECOND DEFENSE of this

answer. Under said contracts, plaintiff Clyde Perkins was a joint obligee with Lee G. Powell and with Robert B. Harris (and after his death with his successors). Both Lee G. Powell and the successors of Robert B. Harris are indispensable parties to this action.

#### FOURTH DEFENSE

This defendant re-alleges the facts set forth in the THIRD DEFENSE and avers that plaintiff Clyde Perkins has no standing or capacity to recover in his own name upon any right of action alleged in the complaint.

WHEREFORE, this defendant denies that plaintiff Clyde Perkins is entitled to the relief prayed for or to any other relief against it, and prays for judgment dismissing the action as to it with its costs and disbursements incurred herein, and for such other and further relief as the Court may deem just and proper.

KOERNER, YOUNG, MCCOLLOCH, &  
DEZENDORF

WAYNE HILLIARD

Koerner, Young, McCulloch &  
Dezendorf

Wayne Hilliard

*Attorneys for Defendant  
Standard Oil Company of  
California*

#### III. Trial Court Charge to the Jury

#### [6326] INSTRUCTIONS BY THE COURT

The Court: Ladies and gentlemen of the jury, this case has now progressed to the stage where it becomes the duty, and indeed the privilege, of the Court to advise with you and to instruct you as to the law which surrounds and applies to the facts of this case and which will guide

you as trial jurors throughout your entire deliberations upon your ultimate verdicts and conclusions in the matter.

You, members of the jury, are the sole judges of the facts, and the Court has no right and indeed no desire to influence you in this regard. If I can suggest, pinpoint, and advise, well and good, but not to direct or influence. So if during the course of the trial or these instructions you gain some thought or some impression that the Court is indicating or suggesting to you a particular jury conclusion on some issue of fact, you must disabuse your minds of that thought or impression.

On the other hand, the law of the United States permits the trial judge to comment upon the evidence or on the witness during the course of the trial if that judge feels so inclined. But bear in mind that if during the [6327] trial I have made some comment towards the evidence, towards a witness, it is only my expression and my thoughts at the moment, and they are not facts, and you as trial jurors may consider them or entirely disregard them.

During the course of the trial I may have asked some questions of some of the witnesses. There was no intent to bring out any particular facts that I thought were more important. It was just that I thought that there was some area to be clarified.

Now, it is the duty of the attorneys on each side of the case, and particularly one as hardly contested like this, to object when the other side offers testimony or other evidence which counsel believes is not properly admissible. When the Court has sustained an objection to a question, the jury is to disregard the question and may draw no inference from the wording of it or speculate as to what the answer might have been if the witness had answered. Upon allowing testimony or other evidence to be introduced over the objection of counsel, the Court does not, unless expressly stated at that time to you, indicate any opinion whatsoever as to the weight or the



effect of the evidence. It is merely ruling that it is lawful evidence to come to you.

As you are the sole judges of the facts, so is the Court the sole judge of the law of the case, and you are [6328] under oath to accept and to follow the law as this Court shall give it to you and not substitute what you think the law is or what you might think the law should be.

Under the law, these instructions must be given to you by the Court orally and should not be repeated. So may I ask you to give me your best attention.

The order on which parts and subject matters in the instructions are to be given to you has no special significance, and it is not to give to you any suggestions as to the relative importance. You should not single out any particular portion, part or subject of the instructions and place undue emphasis on such an instruction, but you must take them and consider them all as a whole.

[6329] The Court: (Continuing) The order and grouping of the instructions is my doing, and it is my computations with the hope that you will find a continuity of topics and subjects which will help you in approaching and dealing with your obligation in arriving at a true and just verdict from all of the facts in dispute before us.

Neither are you to be concerned as to the wisdom of any law, regardless of any opinion you might have as to what the law is or ought to be, it would be a violation on your part as well as on my part to disregard it. Constantly bear in mind that you are to perform as trial jurors without bias, or prejudice to any party or thought of public concern about the matter. The law does not permit the trial jurors to be so governed or controlled. The parties and the public expect that you will carefully and impartially consider all of the evidence, follow the law as given to you by the Court and render a just verdict regardless of what the consequences might be.

With that, members of the jury, this law action is based upon alleged violations of the so-called Robinson-Patman

Act of the United States, which is referred to generally as anti-discrimination laws, and which in general prohibits discriminatory practices in competitive business fields where a person's business or property is apt to be injured. [6330] I shall divide these instructions into eight main categories as follows:

First, a delineation of the principal parties and their relationship to each other;

The provisions of the Robinson-Patman Act which are pertinent to us. A summary of the plaintiff Clyde Perkins' contentions giving rise to the three causes of action which he is pressing against the defendant Standard and Standard's contentions in answer and defense in the matter.

The material elements of each cause of action by plaintiff Clyde Perkins for the recovery of alleged damages sustained by himself and the two Perkins corporations on account of the alleged violation of the various sections of the Act.

Five, the necessity of either a written or an oral assignment of the Perkins corporations' causes of action against defendant Standard to plaintiff Clyde Perkins.

Next, the defense of Standard, referred to as the "good faith meeting of competition" defense to a price discrimination charge.

Next, the proper measure and method of assessing damages, if you arrive at that stage.

Next, the Court's suggestions and rules and cautions to you about your duties as jurors in weighing and viewing and dealing with the evidence, the witnesses, and their [6331] testimony.

Then, lastly, the directions to you as to the form of verdict and the interrogatories which the Court will submit to you.

Now, Category One relates to the parties. As you well know, the plaintiff is Clyde Perkins. You must consistently keep in mind that he appears and is prosecuting

in this action three several distinct causes of action, seeking a recovery in each of damages by reason of alleged violation of the Act by Standard.

The first one, his own individual alleged cause of action against the defendant Standard Oil Company of California, a corporation, to whom I have been and will hereafter refer to as "Standard" or possibly "defendant Standard."

Second, the alleged cause of action of Perkins Oil Company of Oregon, an Oregon corporation, whom we have been referring to, and I will hereafter refer to as Perkins of Oregon, also against defendant Standard.

The third cause of action, the alleged cause of action of Perkins Oil Company of Washington, a Washington corporation, whom I shall call Perkins of Washington.

The evidence before us establishes that prior to the year 1952 the plaintiff, Clyde Perkins, operated this business of marketing refined petroleum products supplied [6332] to him by defendant Standard as an individual or in some relationship with his son, Allen Perkins. After 1952, Perkins of Oregon, and Perkins of Washington were incorporated and Clyde Perkins, the three of them marketed these products. Now businessmen can freely and rightfully incorporate their businesses to gain the advantages that are inherent to a corporate operation. But if a businessman chooses to incorporate his business, he must take the legal consequences of this form of operation. For while Clyde Perkins might think of himself as the sole proprietor of the grouped enterprises—that is, of himself and the two corporations, he cannot disregard the three several and independent legal entities—himself, the corporation of Washington and the corporation of Oregon, each having in its own several and distinct capacities several and distinct legal rights and duties with reference to each other and to the three parties.

In this action, Clyde Perkins asserts claims alleged to have accrued to him as an individual as well as claims alleged to have accrued to Perkins of Oregon and claims al-

leged to have accrued to Perkins of Washington. Plaintiff asserts further that the claims of these corporations were legally assigned to him prior to the commencement of this action on March 2, 1959. I instruct you that you must consider each of these three claims separately and must pass [6333] on each of them separately from the other. In other words, you must disregard any claim by plaintiff that he and the two corporations can be treated as a single entity or a family group.

You were told earlier in the trial that there are three other formally named defendants, Harris Oil Company, a corporation, Harris Distributing Company, a corporation, and Lee Powell, but you are to give them no concern whatever in your consideration of this litigation between Clyde Perkins and Standard for the reason that any interest that they may have in the matter is purely one of law for the Court to deal with.

It appears, I suggest to you, from the evidence that Clyde Perkins received his supply of Standard's brands of gasoline under two basic contracts, one dated April 16th, 1953, and the other July 16th, 1956. You will note in the contract, and as you have heard, of course, during the trial, that Clyde Perkins and his then associates, Lee G. Powell, Dorothy M. Harris, Harris Oil Company, and Harris Distributing Company, were designated as co-consignees with the joint right to receive the gasoline under the contracts. It is conclusive from the evidence that Clyde Perkins and his mentioned associates, with the full approval of Standard, divided the allotted Oregon-Washington marketing area among themselves and each operated independently of the other. [6334] So in this phase of the case we are concerned only with the brands of gasoline which Clyde Perkins himself received from Standard.

I suggest to you that Clyde Perkins after receiving Standard's brands of gasoline, then in turn utilized or marketed some of the gasoline to retail public consumers through stations operated by his agents, but placed or

turned over the great bulk of the supply to Perkins of Oregon and Perkins of Washington for ultimate sale and distribution to the consumer through outlets in which they, he, that is, and the corporations had interests respectively or through their respective customers. It is for you to determine under the facts the exact relationship and terms of sale among these parties as I only suggest the foregoing channel of the flow of the gasoline as the mechanics of getting the gasoline received from Standard through Clyde Perkins, Perkins of Oregon and Perkins of Washington to the ultimate consumer.

I remind you again that this action is being brought and pressed by an individual person as plaintiff against a corporation as defendant. Also, that there are a number of corporate parties, such as the Perkins Corporation, the Signal Oil and Gas Company, and numerous other corporations as well as individual persons referred to as purchasers, customers, competitors and the like.

Of course, a corporation can only conduct its affairs [6335] and act through its officers, agents, and employees, and the corporation is accountable and responsible as its own for the acts and doings of its officers, agents, and employees while acting in the business and the affairs of the corporation and done within the scope of the delegated authority to the officers, agents, or employees expressly or impliedly given or reasonably apparent from all the attending facts and circumstances surrounding it.

While, of course, humans in their own individual capacities and dealings think, speak and act for themselves and are thereby accountable to themselves and others for their conduct, such individuals can also, just as a corporation, can act and conduct their affairs and businesses through agents and employees and will be likewise held accountable and responsible for the acts of those agents and employees.

The whole of this case should be considered and decided by you as an action between persons of equal standing



in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as a private individual. The law is no respecter of persons; all persons, including corporations, stand equal before the law, and are to be dealt with as equals in this court.

Now as to Category Two, dealing with the Robinson-[6336] Patman Act of Congress and the Provisions thereof which are involved in this matter.

The Supreme Court of the United States in interpreting the basic Act of Congress here involved once said:

"Congress was dealing with our system of free competitive enterprise, which it sought to protect. That is, to preserve the fullest practical competition in the market place."

So, members of the jury, it is with that same practical spirit and attitude that we must adopt and maintain throughout our dealing with this matter before you and for your consideration.

You are instructed that the pertinent portions of the Act involved provide:

"It shall be unlawful for any person engaged in commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such [6337] discrimination, or with customers of either of them."

The next section of interest to us provides:

"It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person

in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities mentioned, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

The next section that is pertinent for us reads:

"It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms."

You will recall that the Act just read to you forbids one directly or indirectly to discriminate in price between [6338] different purchasers and customers of commodities of like grade and quality when the transactions are in commerce. And further forbids payment for or furnishing of services and facilities to persons and customers on equal or disproportionate terms when the transactions are in commerce.

As to these items, you know, of course, that directly and indirectly means exactly what it says—that is, one is prohibited from doing indirectly or in a roundabout way what he cannot do directly.

And as for the meaning of the terms "Purchasers" and "Customers," you are instructed that the Court has determined as a matter of law under the only reasonable construction of all the facts and circumstances surrounding the parties in all the transactions herein involved that Clyde Perkins individually, Perkins of Oregon, Perkins of Washington, Signal Oil and Gas Company, and each of them, were purchasers within the meaning and the use of that

term as used in the Act and that the dealers and outlets of Clyde Perkins individually, Perkins of Oregon, Perkins of Washington and Signal Oil and Gas Company were customers of those purchasers, respectively, and that the Chevron and Signal dealers were customers of Standard, all within the meaning and use of the term "customer" as used in the Act.

And further, that Clyde Perkins individually, Perkins of Oregon, Perkins of Washington, and Signal Oil and Gas [6339] Company were customers of Standard within the meaning of that term as used in the Act.

You have heard much during the trial about the contracts between Clyde Perkins and the defendant Standard and whether such contracts were consignment agreement or purchase of sale or whether plaintiff, Clyde Perkins, was a consignee of a purchaser from Standard Oil.

On a number of occasions, I suggested to you that you keep from placing any significance upon counsel's use of the word themselves until the question became one of fact for you or one of law for me.

Now, since I have instructed you that the plaintiff, Clyde Perkins, is a purchaser within the meaning of that term under the Robinson-Patman Act, I instruct you to disregard and strike from your minds all testimony and consideration of whether or not these contracts were consignments or purchaser and sale contracts in the commercial law sense. It has no bearing in your considerations here whatsoever. So far as this case is now concerned, it makes no difference at all whether or not the plaintiff, Clyde Perkins, is identified as a consignee in any contract, invoice or other piece of evidence in the case.

[6340] The Court: (Continuing) As for the phrase of commodities of like grade and quantity you are to keep in mind that there is no question about it, and that all the parties have acknowledged that the respective brands of gasoline of like grade and quantity were delivered by Standard to Clyde Perkins, to Signal Oil and Gas Company,

its customers, and Standard's Chevron and Signal dealers.

Now, of course the phrase "in commerce" means interstate commerce, and you are instructed as a matter of law that all of the transactions involved among all of the purchasers and customers had in connection with commodities flowing through interstate commerce and that requirement of the law is satisfied for us here.

Now, going to the contentions of Clyde Perkins, of the plaintiff Clyde Perkins and the defendant Standard, Clyde Perkins by his contentions in the pretrial orders as amended alleges in substance that during the period of March, 1955, and continuing until the end of '57, 1957, he purchased refined petroleum products from the defendant Standard, and defendant then had discriminated in price by selling to plaintiff Clyde Perkins at higher prices than the prices charged by Standard to plaintiff's competitors with respect to gasoline both on regular and premium grade.

The particular competitors concerned are Signal Oil and [6341] Gas Company and Chevron dealers and Signal dealers, the latter two selling Standard and Signal gasoline under Standard's respective brands.

Plaintiff further alleges that the defendant Standard discriminated against plaintiff by furnishing certain services and facilities to plaintiff's competitors and by paying such competitors for services or facilities furnished by them without making such services or facilities or payment therefor available to plaintiff Clyde Perkins on proportionately equal terms.

The plaintiff further alleges that as a result of these discriminations he was injured in his business and property by his inability to compete effectively with the favored competitors or the customers of these competitors, namely, Signal Oil and Gas Company and Chevron and Signal dealers.

Plaintiff further alleges that the claimed discrimination of defendant Standard extends also against Perkins of Washington and Perkins of Oregon; and that these cor-

porations were also injured by reason of such discrimination on the part of the defendant Standard in favor of Signal Oil and Gas Company, Chevron and Signal dealers, and the customers of such of plaintiff's competitors.

The plaintiff further alleges that prior to the filing of this action on March 2, 1959, Perkins of Oregon and Perkins of Washington assigned their respective claims [6342] against the defendant Standard to the plaintiff.

Now, the defendant Standard in its contentions in the pretrial orders as amended denies that it has in anywise violated any section of the Robinson-Patman Act called to your attention.

Standard further denies that its sales of gasoline may have had the effect to substantially lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition with Standard or with any persons knowingly receiving the benefit of any discriminatory price or with the customers or either of them.

Defendant Standard further denies that plaintiff Clyde Perkins was purchasing from defendant Standard. That of course has been resolved adversely to that contention.

Defendant Standard denies during the relevant years, 1955 and 1956 and 1957, that Clyde Perkins as an individual was engaged in business as a marketer of refined petroleum products; and defendant Standard further denies that plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington was injured in business or property by reason of any act of Standard's connected with the sale of gasoline.

The defendant Standard further denies that Perkins of Oregon or Perkins of Washington assigned in writing or otherwise any claim which they, the corporations, might have [6343] against Standard to the plaintiff Clyde Perkins prior to March 2, 1959, or otherwise within four years from the time of any such claims could have accrued or originated.



Finally, defendant Standard contends and asserts the defense known as the good faith meeting of competition defense, and I will instruct you further on the law bearing on this defense later on.

There may be testimony, or documents presented in evidence during the course of the trial relating to Standard's dealing with the Washington Co-Operative Farmers Association, Clipper Oil Company, True's Oil Company, Meritt-Truax, W. L. Peavey, Truax Oil Company, and Lee G. Powell and Dorothy M. Harris or Harris Oil Company or Harris Distributing Company.

You are instructed, members of the jury, that there is no evidence before you from which you could find the defendant Standard in its dealings with any of these companies or persons has discriminated against Clyde Perkins or the Perkins Corporations in price or in payment of service or facilities or in furnishing service or sales.

So, accordingly I withdraw from your consideration any claim by plaintiff which is based on Standard's dealings with any of these named companies or individuals.

I further withdraw from your consideration any claim [6344] which may have been advanced by the plaintiff based on any alleged discrimination in price or in payment of service or facilities furnished by a customer or in the furnishing of services and facilities to customers relating to the sale of furnace oil, diesel oil, stove oil, automotive diesel oil, and kerosene, including all claims based on Standard's sales of furnace oil and stove oil to the Time Oil Company.

You may however consider what effect, if any, the price, service, or facility discrimination by Standard against either Perkins of Washington or Perkins of Oregon on gasoline purchased, if any there was, had upon the furnace, diesel, stove and automobiles diesel oils and kerosene business, or either of the two corporations, when and if you are considering the matter and amount of damage that the plaintiff Clyde Perkins should recover on account of any

such discrimination by Standard, if any, you may consider it.

Also, members of the jury, you are instructed as a matter of law that there is no evidence before you from which you could find that the defendant Standard paid or contracted for the payment of anything of value to or for the benefit of Signal Oil and Gas Company in compensation or in consideration of any service or facility furnished by Signal Oil and Gas Company; and, accordingly, you are instructed that you cannot award plaintiff any damage on [6345] account of any such alleged payment by defendant Standard; and, further, that there is no evidence before you from which you could find the defendant Standard discriminated in favor of Signal Oil and Gas Company and against plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington by contracting to furnish or furnishing or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of gasoline.

Accordingly, I instruct you as a matter of law that you cannot award plaintiff's damage on account of any such alleged discrimination in the furnishing of services or facilities in connection with the dealings of Signal Oil and Gasoline.

Turning now to the category of necessary elements of the three causes of action alleged by Clyde Perkins, members of the jury, as a general proposition, the Antitrust Laws do not require Standard to protect its jobbers or distributors from competitive hardships generally; nor do they require Standard to assure those jobbers and distributors a profit ratio. There is nothing in the Antitrust Law that requires Standard to supply jobbers with prices or in the case of consignee jobbers the commission rates equal to those which Standard's competitors, that is, other refineries of petroleum products charge or extend to their jobbers or [6346] distributors.

Accordingly, plaintiff Clyde Perkins cannot recover damage in this action on any of the causes of action for loss which he or Perkins of Oregon or Perkins of Washington, or any of them may have sustained because of adverse competitive conditions of the market generally or because of the inability of Perkins of Oregon and Perkins of Washington to compete with jobbers or distributors supplied by refineries other than Standard and which did not result from any violation of the act by Standard.

I will in a moment instruct you in detail on the various elements which plaintiff must prove to establish that Standard has violated the Antitrust Statute or been in discrimination in prices or in payment of services or facilities furnished by the customers or in the furnishing of services and facilities.

But, first, in general I instruct you that a private treble damage to plaintiff cannot recover damages by proving only a violation of the statute, that is, the charging of discriminatory prices to different purchasers with the resulting adverse effect on competition or the failure to furnish services or facilities to purchasers on proportionately equal terms or the failure to make payments on proportionately equal terms for services or facilities furnished by customers.

[6347] A private treble damage plaintiff must in addition prove as a reasonable probability that the violation had an adverse impact or an effect upon his business or property or that of his assignor or that caused him or his assignor to suffer damage in an amount ascertainable with reasonable probability.

Now, I am proceeding to instruct you on the various elements which must be proven to establish a violation of the statute and to show injury to business or property and the proper basis for the assessment of damage, if any, may have been shown to your satisfaction.

In order for the plaintiff Clyde Perkins to recover damages for injury to his own property or properties by reason of any price discrimination by defendant Standard in the sale of gasoline, he must prove by a preponderance of all of the evidence four elements which make up such a claim, and these are:

First, that Standard sold gasoline to Clyde Perkins at higher prices than the prices charged by Standard on reasonable contemporaneous sales of gasoline of the same type to competitors; and,

Two, that the reasonably probable effect of such discrimination might have been to substantially lessen competition or tend to create monopoly in any line of commerce or to injure, destroy, or prevent [6348] competition by Clyde Perkins with Standard or with any favorite purchaser of Standard, or with a customer of a favored purchaser of Standard.

Three. That plaintiff Clyde Perkins was injured in his property or business by reason of such discrimination; and last,

Four. That this injury resulted in damage to him in an amount which can be estimated and determined with reasonable inferential probability supported by reasonable data.

So, members of the jury, if you find a failure on the part of Clyde Perkins to prove any one of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the defendant Standard.

If, however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of his



cause of action must be for the plaintiff Clyde Perkins, unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of good faith in meeting of competition, on [6349] which I shall later instruct you more fully.

Members of the jury, I repeat that whether plaintiff Clyde Perkins is able to establish any one of his alleged causes of action against defendant Standard depends on whether he proves by a preponderance of all of the evidence before you each and all of the necessary elements of his causes, respectively.

Since, I will be giving you some six sets of necessary elements dealing with the three phases of each cause of action, I want to make certain that you have a clear picture in your minds of this grouping and continuity in the statement of the necessary elements. So, I will once again give you the four elements and directions as to your instructions, which I just gave you—not to emphasize, mind you, but only with the few that the repetition will pinpoint the elements and help you to get into the swing and follow.

These three sets of material elements deal with the three phases of Clyde Perkins individually alleged cause of action.

Now, in order for Clyde Perkins to recover for injury to his business or property by reason of any price discrimination by defendant Standard in the sale of gasoline, he must prove by a preponderance of all of the evidence four elements which make up such a claim.

[6350] They are:

First, that Standard sold gasoline to Clyde Perkins at higher prices than the price charged by Standard on reasonable contemporaneous sales of gasoline of the same type to competitors of plaintiff.

Two. That the reasonably probable effect of such discrimination may have been to substantially lessen com-



petition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition by Clyde Perkins with Standard or with any favored purchaser of Standard or with a customer of a favored purchaser; and,

Three: That plaintiff Clyde Perkins was injured in his business or property by reason of such price discrimination.

Four. That this injury resulted in damage to him in an amount which can be estimated and determined with reasonable inferential probability supported by reasonable data.

So, if you find a failure on the part of Clyde Perkins to prove any one of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of the cause of action must be for the defendant Standard. [6351] The Court: (Continuing) If however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the plaintiff, Clyde Perkins, unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of good faith meeting of competition on which I shall later instruct you more fully.

Now, as to the second phase of this first cause of action, in order for plaintiff Clyde Perkins to recover damage for injury to his business or property by reason of any discriminatory payments by defendant Standard for services or facilities furnished to another customer, plaintiff must prove by a preponderance of all of the evidence three elements which make up such claim. These are, first, that Standard paid or contracted for the payment of anything

of value to or for the benefit of any Chevron or Signal dealer as compensation or in consideration for any service or facility furnished by such dealer without making such payment available to plaintiff on proportionately equal terms; and two, that by reason of such discrimination and payment for service or facilities, plaintiff Clyde [6352] Perkins was injured in his business or property; and third, that this injury resulted in damage to him in an amount which can be estimated and determined with reasonable probability on the basis just mentioned before.

If you find a failure on the part of Clyde Perkins to prove any one of these three elements to establish his cause of action for payment for performance of service and facilities discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the defendant Standard. If, however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these three necessary elements to establish his cause of action for payment for performance of service or facilities discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the plaintiff Clyde Perkins.

Now, on the third phase of Clyde Perkins' own cause of action, in order for plaintiff Clyde Perkins to recover damage for injury to his own business or property by reason of any discrimination in the furnishing of services or facilities connected with the sale of gasoline by the defendant Standard to another customer, he must prove by a preponderance of the evidence three elements that make up such a claim, and they are: First, that Standard [6353] contracted to furnish or furnished or contributed to the furnishing of any service or facility connected with the processing, handling, sale or offering for sale of gasoline to or for the benefit of any Chevron dealer or Signal dealer but failed to make such service or facility available to plaintiff on a proportionately equal term; and two, that

plaintiff Clyde Perkins was injured in his business or property by reason of such discrimination in the furnishing of services or facilities; and three, that this injury resulted in damage to him in an amount which can be determined with reasonable probability on a like basis as just mentioned.

In this third phase, if you find a failure on the part of Clyde Perkins to prove any one of these three necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against him, then your verdict on this phase of this case on the cause of action must be for the defendant Standard. If, however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these three necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the plaintiff Clyde Perkins.

[6354] Inasmuch as the necessary elements for the alleged cause of action on behalf of Perkins of Oregon and Perkins of Washington are identical, I can state the material elements in the plural, as you will note that they are to be applied to the two corporations alike, but severally, of course. So these three sets of material elements deal with the three phases of Clyde Perkins' claims of the alleged cause of action on behalf of Perkins of Oregon and Perkins of Washington respectively.

In order for the plaintiff Clyde Perkins to recover for injury to the business or the property of Perkins of Oregon or Perkins of Washington, or either of them, by reason of any discrimination in price by the defendant Standard in the sale of gasoline, plaintiff must prove by a preponderance of the evidence each of the five elements which make up the claim. These are, first: that Standard sold gasoline to them or either of them at a higher price than the price charged by Standard on reasonable con-

temporaneous sales of gasoline to the same type of competitors of these corporations; two, that the reasonable probable effect of such discrimination may have been to substantially lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy or prevent competition by Perkins of Oregon or Perkins of Washington, or either of them, with Standard or with any favored purchaser of [6355] Standard or with a customer of a favored purchaser; and three, that Perkins of Oregon and Perkins of Washington, or either of them, was injured in its business or property by reason of such discrimination; and four, that such injury resulted in damage in an amount which can be estimated and determined with reasonable inferential probability and be supported by reasonable data; and five, that each of these corporations has assigned its claim against Standard to plaintiff Clyde Perkins within four years from the time of any damage alleged to have been suffered by them throughout the claim period actually occurred and prior to March 2, 1959.

Now, you will note, members of the jury, that these material elements of price discrimination are identical with the corporation as it is with Clyde Perkins individually, with the additional necessary element on behalf of the corporation that there be an assignment of their claim to Clyde Perkins as plaintiff executed prior to March 2nd, 1959. If you find a failure on the part of Clyde Perkins to prove any one of these five necessary elements to establish his cause of action for price discrimination by Standard against either one or both of the two Perkins corporations, then you cannot find a verdict for Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them. If, however, you find [6356] from a preponderance of all of the evidence before you that Clyde Perkins, plaintiff, has proved each and all of these five necessary elements to establish his cause of action for price discrimination by Standard against either one or



both of the two Perkins corporations, then you must find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them, unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of good faith meeting of competition on which I shall later instruct you more fully.

In order for plaintiff Clyde Perkins to recover damages for injury to the business or property of Perkins of Oregon, Perkins of Washington, or either of them, by reason of any discriminatory payment by defendant Standard for services or facilities furnished by customers, plaintiff must prove by a preponderance of the evidence four elements which make up—I beg your pardon. That is right, four elements which make up such claim: First, that defendant Standard paid or contracted for the payment of anything of value to or for the benefit of any Chevron or Signal dealer as compensation for and in consideration for any services or facilities furnished by such dealer without making such payments available to Perkins of Oregon and Perkins of Washington, or either of them, on proportionately [6357] equal terms; two, that Perkins of Oregon and Perkins of Washington, or either of them, was injured in its business or property by reason of such discriminatory payments; and third, that this injury resulted in damage in an amount which can be estimated and determined with reasonable probability on like basis of reasonable data; and fifth, that each of these corporations assigned its claim against Standard to plaintiff Clyde Perkins within four years from the time any damage alleged to have been suffered by them throughout the claim period actually occurred and prior to March 2nd, 1959.

If you find a failure on the part of Clyde Perkins to prove any of these four necessary elements to establish his cause of action for payment for performance of services or facilities discrimination by Standard against either



one or both of the two Perkins corporations, then you cannot find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them. If, however, you find from a preponderance of all of the evidence before you that plaintiff Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for payment for performance of services or facilities discrimination by Standard against either one or both of the two Perkins corporations, then you must find a verdict for [6358] plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them.

Lastly, in order for plaintiff Clyde Perkins to recover damage for injury to the business or property of Perkins of Oregon and Perkins of Washington, or either of them, by reason of any discrimination in the furnishing of services or facilities connected with the sale of gasoline by defendant Standard, he must prove by a preponderance of the evidence four elements which make up such a claim, and these are: One, that defendant Standard contracted to furnish or furnished or contributed to the furnishing of any service or facilities connected with the processing, handling, sale or offering for sale of gasoline to or for the benefit of any Chevron dealer or Signal dealer but failed to make such service or facilities available on proportionately equal terms to Perkins of Oregon and Perkins of Washington or either of them; and two, that Perkins of Oregon and Perkins of Washington, or either of them, was injured in its business or property by reason of such discrimination; and three, that this injury resulted in damage in an amount which can be estimated and determined with reasonable probability on like basis of reasonable data; four, that each of these corporations assigned its claims against Standard to the plaintiff Clyde Perkins within four years from the time any damage alleged to have been [6359] suffered by them throughout the claim period actually occurred and prior to March 2, 1959.

If you find a failure on the part of Clyde Perkins to prove any one of these four necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against either one or both of the two Perkins corporations, then you cannot find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporations or both of them. If, however, you find from a preponderance of all of the evidence before you that plaintiff Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against either one or both of the two Perkins corporations, then you must find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them.

[6360] The Court: (Continuing) There you will notice the necessary elements for payment of services and facilities, discrimination as well as furnishing services and facilities, discrimination are identical. Clyde Perkins individually and the two corporations with the additional element on behalf of each of the corporations that they assigned their claims to Clyde Perkins, as you were advised prior to March 2nd, 1959.

Now, Members of the Jury, by way of a summary recap of my directions as to your verdicts, you will now understand that if plaintiff Clyde Perkins fails to prove and establish all three phases of any one or more of the three alleged causes of action—that is, phase one, being price discrimination; and two, being payment for; and three, furnishing of services and facilities discrimination. Then it follows that if plaintiff Clyde Perkins does prove and establish by a preponderance of all of the evidence under these instructions any one or more of the three phases—that is, one, price, two, payment for, and three, furnishing of services and facilities discrimination of any one or more of the three alleged causes of action, then you must return a verdict in favor of the plaintiff-Clyde Perkins on any such one or more of the three causes of action.

You will recall that one of the elements of the claim of price discrimination by Standard against Clyde Perkins [6361] individual and the two Perkins corporations was that Standard sold to Clyde Perkins at higher prices than the price charged by Standard to others. In this connection I instruct you that the term price means the final net amount paid by a purchaser to a seller after taking into account all discounts, rebates, allowances, adjustments, and taxes, if any there be which were a part of the terms of the sale or later allowed and granted at any time within the claim period. Bear in mind that differences in the terms of sale do not necessarily affect the price directly or indirectly. May I withdraw that. Bear in mind that differences in terms of sale which do not affect the price directly or indirectly are not to be considered by you in determining whether or not there was a discrimination in price between purchasers even if such difference in the terms of the sale did affect the cost of the product to the customer such as items of expense or other cost of the transaction that go in to make up the total cost of the product to the purchaser rather than the price paid by the purchaser to the seller for the product. Therefore, you are instructed that in computing or determining the final net price charged by Standard to a competitor of Clyde Perkins or either of the Perkins corporations, such as to Signal Oil and Gas or to a Chevron or to a Signal dealer, you must first deduct all discounts, allowances, payments, rebates, and taxes made and [6362] allowed within the claim period in order to determine whether or not such final net price was in fact lower than the final net price computed in like fashion which defendant Standard charged plaintiff, Clyde Perkins, for like grade and quantity.

You all know that when we speak of price in connection with price discrimination, we mean the final net price which the purchaser paid to the seller as computed on the above basis.

You are instructed that as a matter of law that there is not discrimination in price if the price charged by Standard to two purchasers are identical even though in one case the price has been firmly agreed upon in the contract while in the other the contract price was higher but was reduced by a contemporaneous or later adjustment, such as a temporary allowance. In other words, a purchaser receiving the same price as other purchasers cannot complain merely because he has no contractual assurance that the cut price will continue in the future for any definite period of time while in the case of other purchasers such contractual assurance exist. For this reason you are instructed that in determining whether a discrimination in price existed you must compare the prices after all adjustments have been properly and ultimately made at any time within plaintiff's claim period in accordance with the definition as I have [6363] given you, and you must disregard any such prices which were based and arrived entirely on a firm contractual payment or for any other part upon such agreement and in part upon a temporary price deduction.

It is the law that if a plaintiff has proved by a preponderance of the evidence that the defendant had discriminated in price in the sale of gasoline between different purchasers who were in competition with each other and that the price differential was substantial, and applied to a substantial quantity of gasoline over a substantial period of time, you may infer from such facts that such price differential may have had the necessary adverse effect on competition, but you are the judge of the facts and you are entirely to draw such inferences on the basis of all of the evidence before you in this case.

You have heard in these instructions such phrases as price differential being substantial, substantially to lessen competition, substantial quantity of gasoline, and substantial period of time. These phrases all utilizing the word "substantial."



Members of the jury, something to be substantial in character or quantity simply means of some real existence or substance, as distinguished from being imaginary, unreal, or negligible.

Now, as to the required written or oral assignments of [6364] the Perkins operations' causes of action to plaintiff Clyde Perkins. You will recall that the five necessary elements of plaintiff Clyde Perkins three phases of his case of actions seeking to enforce the causes of the two Perkins corporations is—that each of the corporations assigned their respective cause of action for discrimination by defendant Standard to plaintiff within four years from the time any damage was suffered and in any event prior to March 2, 1959.

You are instructed that under the law this required assignment or transfer of a cause of action may be accomplished by either a written instrument or by a parol arrangement—that is, by words and conduct of the assignor, the party making the transfer, and the assignee, the party, accepting the transfer.

In this cause of action plaintiff has claimed and he, his son, Allen Perkins, and his bookkeeper, Mrs. Maxine Ross, have testified, that the written assignments from the two corporations to plaintiff which have been identified as Exhibits 17A and 17B, were executed prior to the filing of this lawsuit on March 2, 1959. The defendant, by the testimony of the witness Bowring, Black, and Heiderich, and the exhibits identified through these witnesses, has introduced evidence which defendant claims tends to show that these written assignments were not only not executed [6365] prior to March 2, 1959, but were in fact executed after the Perkins office acquired a Selectric typewriter in November of 1961. The witness Holcomb has given you his testimony concerning his analysis of some of the typewriter and type sample evidence which the plaintiff claims tends to support his position. Also the witnesses, Snider and Nance, have testified to their respective participation



in the preparation and typing of the Exhibit 17A and 17B. You have also heard the testimony of other persons concerning it all of which the plaintiff claims tends to support his contention that the purported exhibits were typed and executed sometime prior to the filing of this lawsuit on March 2, 1959. Thus, the issue and claims of the parties as to the date and time of the typing and execution of the written assignments, Exhibits 17A and 17B, is clearly presented to you.

If you find from a preponderance of all the evidence before you that the purported written assignments being Exhibits 17A and B of the Perkins Corporations to the plaintiff Clyde Perkins were typed and executed, that is signed, by the officers named on behalf of the respective corporations at any time prior, at any time before March 2, 1959, that puts an end to your inquiry concerning the sufficiency of such written assignments or any assignments in this case. That is so, because under the facts and the [6366] law of the case, each one of these two purported written assignments, 17A and 17B, is a good and valid sufficient legal assignment of the named corporation to plaintiff if it was signed by the officers named on behalf of the respective corporation at any time prior to March 2nd, 1959.

However, in the event that you find that either one or both of the two written assignments, agreements, being Exhibit 17A and 17B, were not typed and executed—that is, signed—by the purported signers prior to March 2, 1959, then you must disregard such purported written assignments as it would not meet the requirements of the necessary assignment here. In that event you should then consider the plaintiff's alternate claim of an oral assignment of the two causes of action against Standard by the two Perkins corporations, respectively, to the plaintiff Clyde Perkins. In this connection, you are instructed that a cause of action is a legal relationship—a claimed right to recover something legally—or an intangible

thing. A transfer of a cause of action from one person to another is purely a matter of mind or intent on the part of the person making the transfer to make it, and also on the part of the person to whom it is transferred, whether to accept. It requires mutuality, a meeting of the minds. So it follows that it is for you to determine from all of the evidence before you, considered together with all reasonable inferences arising [6367] from the proven statements and conduct of the principal parties, whether either or both of the Perkins corporations, acting through any officers or officer determined by you to have policy-making or executive authority over the affairs of such corporation, had the mind or intention to assign or transfer its corporate cause of action against defendant Standard to the plaintiff Clyde Perkins and whether the plaintiff Clyde Perkins had the intent to accept such assignment and transfer at any time prior to March 2, 1959.

If you find that there was no such oral arrangement or transfer of either or both of the two corporate causes of action to the plaintiff Clyde Perkins, then you must disregard such claim of oral assignment and conclude that there was no necessary assignment from such corporation.

If, however, you find from a preponderance of all of the evidence before you that either or both of the Perkins corporations did have such a corporate officer mind or intention to and did assign or transfer its cause of action against defendant Standard to plaintiff Clyde Perkins and that the plaintiff had the intention to accept and did accept all prior to the institution of this action on March 2, 1959, then you must conclude that an oral arrangement of assignment of such corporations' cause of action to the plaintiff, as required under these instructions was made and accomplished.

[6368] Now as for Standard's claimed "good faith meeting competition" defense.

Members of the jury, you will recall that when I instructed under what state of the plaintiff Clyde Perkins'

proof you might and must return a verdict or verdicts in favor of Clyde Perkins on claimed price discrimination, now that is claimed price discrimination only, not the furnishing or payment for services and facilities, so I repeat, in favor of Clyde Perkins on claimed price discrimination, I added—unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of “good faith meeting competition” on which I shall later instruct you more fully. We have now reached that stage.

In connection with this claimed defense, Standard contends that to the extent that it extended to Signal Oil and Gas Company a lower price on gasoline than the amount payable by Clyde A. Perkins to Standard for gasoline delivered, such lower price was extended by Standard in good faith and in the reasonable belief that it was thereby meeting the equally low or still lower price offered Signal Oil and Gas Company by one or more of Standard’s competitors.

This contention seeks to invoke this following provision of the Robinson-Patman Act: It says, “Upon proof being made on a complaint under the act, that there has been [6369] discrimination in price, the burden of rebutting the prima-facie case thus made by showing justification thereof shall be upon the person charged with a violation of this section, by affirmatively showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

It now appears that the evidence in this case is undisputed and that defendant Standard admits that Standard offered a lower price on both ethyl and regular gasoline to Signal Oil and Gas Company after December 31, 1956 than it did to plaintiff Clyde Perkins. Therefore, the plaintiff has proven that there has been price discrimination. However, even if the plaintiff in this case has shown all of the statutory elements making out such a price discrimination violation, the law just read to you allows

a defendant to justify the price differential by affirmatively showing that the lower price which is shown to have been discriminatory was extended by the defendant in good faith to meet the equally low price offered by a competitor.

I will now instruct you on the facts and conditions which must be affirmatively shown to establish this so-called good faith meeting competition defense.

Before the defense of good faith meeting of competition may be used by the defendant under the provisions of the law, there must have been a definite offer which was extended [6370] by a competitor of defendant Standard to a customer of defendant and defendant must have been aware of such offer and must have acted in good faith in meeting such competitive offer. Therefore Standard cannot use this defense unless it knew or was given to reasonably believe while acting in good faith that its customer, Signal Oil and Gas Company, did in fact receive a competitive offer from another potential supplier for like products under similar circumstances, and on or before the time Standard's lower price was extended to Signal Oil and Gas Company and Standard then acted in good faith in meeting such competitive offer.

[6371] The Court: (Continuing) So I instruct you specifically that if defendant Standard has proved to your satisfaction by a preponderance of all the evidence in the case that in selling gasoline to Signal Oil and Gas Company at a lower price than the amount paid to the same type of gasoline by plaintiff Clyde Perkins, it did so either in good faith to meet the equally low price offered Signal Oil and Gas Company by a competitor of Standard, or it did so in good faith and in the reasonable belief that by so lowering its price to Signal Oil and Gas Company, it was actually meeting a competitive offer made to Signal Oil and Gas Company.

Defendant Standard has justified its pricing to Signal Oil and Gas Company, and the plaintiff cannot recover damages in his action because of any such lower price ex-



tended to Signal Oil and Gas Company regardless of any injury which he or Perkins of Oregon and Perkins of Washington may have suffered by reason of such lower price.

Now, members of the jury, as to the category—as to the proper measure of damage, ladies and gentlemen, in the event that you find and do return a verdict in favor of plaintiff Clyde Perkins, in which the defendant Standard on any one or more of the three causes of action, it then becomes your duty to determine and fix the amount of damage plaintiff is entitled to recover from the defendant Standard on such one or more of the three causes of action.

[6372] You may bear in mind that my giving you this instruction as to the proper measure and method of determining and fixing the amount of damage if any, is not to be construed by you as any indication that in my opinion the plaintiff is or is not entitled to recover damage, but only to decide and direct you as to the proper measure and method of determining and fixing the amount of damage in the event you find that plaintiff is entitled to recover some amount of damage.

At the outset in determining whether plaintiff Clyde Perkins and Perkins of Oregon or Perkins of Washington was injured in their respective business or properties by reason of any discrimination by Standard, and if you find that they or any of them were so injured in determining the damage of property to be awarded to compensate for such injury, you must keep in mind the question for your determination is not how much better off plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington would have been if they had received any advantage which defendant may have extended to other purchasers of gasoline but solely how much worse off they were and are because others received such advantage.

In determining the amount of damage, if any, on the basis of the evidence before you which was suffered by the plaintiff Clyde Perkins or the two Perkins corporations or any of them by reason of any discrimination, you may con-



sider [6373] the following factors as claimed by the plaintiff but only so far as you will find that they apply—as you shall find from a preponderance of all of the evidence before you that they apply to Clyde Perkins individually or the two corporations or separately.

*One.* The amount of price differential on gasoline sold by the defendant Standard to plaintiff Perkins on the one hand and the so-called favored competitors Signal Oil and Gas Company and Chevron and Signal dealers or any of them on the other hand.

*Two.* The loss of profit on the volume of gasoline sales which the plaintiff estimates and claims were lost by reason of such discrimination, if any, to the extent that they are supported by reasonable data.

*Three.* The loss of profit estimated on the volume of fuel oil sales and claimed by such discrimination, if any, as far as they are supported by reasonable data.

The so-called rest room and maintenance allowances and the furnishing of credit card services.

The decrease, if any, in the going concern value of the business by reason of the claimed discrimination with respect to stations owned and leased by the plaintiff Clyde Perkins and stations leased by Perkins of Washington [6374] or Perkins of Oregon, or either of them, and the decrease in depreciation, if any, in the going concern value of the fuel oil business of the plaintiff Clyde Perkins and of Perkins of Oregon and Perkins of Washington, or either of them.

Any payments, subsidies, or allowances not reflected in other factors taken into consideration by you of which you find on the basis of the evidence before you were payments by Standard Oil to Signal Oil and Gas Company and Chevron and/or Signal dealers, or any of them, which were not available on proportionately equal terms to plaintiff Clyde Perkins or either of the two Perkins corporations or any of them in accordance with these instructions.

Also, any services or facilities furnished or agreed to be furnished by defendant Standard to Chevron or Signal dealers which were not accorded to plaintiff Clyde Perkins and the two Perkins corporations, or either of them, upon proportionately equal terms in accordance with these instructions.

Now, of course, members of the jury, you must bear in mind that plaintiff Clyde Perkins and Perkins of Oregon and Perkins of Washington, or any of them, cannot recover on the same element of damage more than once.

I should instruct you that as a matter of law you cannot compute damages by merely taking the difference [6375] between the price alleged to have been paid by Clyde Perkins or by the two Perkins corporations or any of them for gasoline to Standard and the price charged the most favored purchaser from Standard and by then multiplying the number of gallons which Standard supplied to them by this difference.

The law allows you coverage only for damages actually sustained by reason of the violation of the Act, and therefore the mechanical price difference as such in and of itself is not the proper measure of damage from the facts in this case.

Members of the jury, you are further instructed that if you find from a preponderance of all of the evidence in the case that first went to any discrimination by defendant Standard, plaintiff Clyde Perkins, Perkins of Oregon or Perkins of Washington, or either of them, was unable to carry on their respective businesses and that such violation caused plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington, or either of them, any damage, then plaintiff Clyde Perkins or the two Perkins corporations, respectively, or any of them, is entitled to have its damage estimated and determined by you based on probable and inferential proof as well as direct and positive proof as long as it is supported by the evidence from concluding reasonable data.

[6376] In this connection, if you find that Clyde Perkins and Perkins of Oregon or Perkins of Washington lost customers or lost sales to customers by reason of any act of discrimination by Standard, the damage which you may award for such losses or loss of business or losses of sale are the net profits which Clyde Perkins or Perkins of Oregon or Perkins of Washington, respectively, or any of them, could have reasonably expected to derive for a continuation of their customer relationship.

You were instructed as a matter of law plaintiff cannot recover gross profits lost due to loss of customers or loss of sales but must take into account the expenses which Perkins of Oregon and Perkins of Washington and Mr. Perkins himself would have reasonably had incurred in making such sales by the respective concerns.

In this regard, you may consider the books and the records of plaintiff Clyde Perkins and the two Perkins corporations, or any of them, and the expert testimony you have heard to determine the loss of the potential profits suffered by either of these parties who are no longer able to continue in business or for whom the business has declined as a result of any discrimination by Standard as found by you; and also any lessening of the going concern value or good will value of the businesses of Clyde Perkins or the two Perkins corporations, or either of them, based [6377] among other things on past profits and performance of these businesses, respectively, as shown in the evidence, and the testimony to your satisfaction.

In connection with your consideration of damages on account of any loss and going concern value or good will value, you are instructed that before any recovery for loss and going concern or good will value for business or property can be had, it must be first shown that the business or property involved in fact had a good will value before the alleged damage occurred.

The most important element of good will is the expectation of future profitable operations. The good will value

exists only if the reasonable expectations of future profits exceeds an amount attributable to a reasonable return on the value of physical properties and a return attributable to the labor of the owners of the business. Only if the business or the property involved has a value over and above the value allocated to the physical assets of such and to the personal services contributed by the owner of the business can a business or a property interest in a business be said to have any good will value.

Plaintiff has claimed damages as an alleged loss in the good will and going concern value of properties leased by Clyde Perkins individually and Perkins of Washington. Before you can determine whether any such loss occurred at [6378] all, you must find that these leasehold interests had in fact a good will value or a going concern business value prior to the alleged occurrence of the damage. In determining whether such good will or going concern value existed, you may take into account the terms of the leases under which Clyde Perkins or either of the two Perkins corporations held these properties because unless those parties, respectively, had reasonable assurance that the leasehold interests would continue for a reasonable period of time, such interests could not have any good will or going concern value.

As was just mentioned to you, the good will or going concern value of property is based primarily on the reasonable expectancy of future possible operations, you are instructed that you cannot award damage for loss of good will based on such a reasonable expectation of future profit operations and also award him damage for loss of net profits due to the loss of sale or the loss of customers because to that extent they would be implicit or making them double profits.

I must direct you to specifically disregard some items of evidence, and in this connection I instruct you that you cannot award plaintiff in this action damages based on any activities of the Fortune stations which were referred to



in the evidence, and accordingly I withdraw any and all claims of damage from that source from your consideration.

[6379] There has been some testimony by plaintiff or by his witnesses that the Regal stations in Portland advertised to the public all major credit cards accepted. You are instructed as a matter of law that there is no evidence in the record that defendant Standard had any connection or participation by Regal stations of such advertisement or such service or facility was extended by Standard to such Regal stations. Accordingly, you are instructed to disregard this testimony because it is not relevant to any issue before you in this case.

There has been some testimony by plaintiff or by his witnesses that Regal stations of Portland advertised to the public that they were selling major brand gasoline. I instruct you as a matter of law that there is no evidence that Standard had any contractual or other lawful right to prevent Regal stations from advertising in that manner.

I instruct you further that there is no evidence in the record from which you could find that Standard approved of such advertisements or had any direct dealings with Regal stations or had anything to do with the method of advertising used by Regal stations.

Accordingly, I instruct you to disregard any such testimony regarding Regal's use and advertising major brand because it has no bearing on any issue before you in this case.

[6380] In this action plaintiff has alleged that he operated a service station called "Interstate Service" within the city of Portland, Oregon.

I instruct you as a matter of law the evidence before you conclusively shows that by the middle of March, 1956, and prior to the time that the Regal station came into existence in Portland, this station called "Interstate Service" was no longer operated or supplied by Perkins of Oregon or Clyde Perkins, individually.



You are instructed as a matter of law that the plaintiff cannot recover in this action for any diminution in the value of real or personal property owned by him and leased to Perkins of Oregon or Perkins of Washington, or to independent operators or service stations or bulk plants supplied by said corporations.

Accordingly, there is withdrawn from your consideration any claims on behalf of the plaintiffs in that respect.

So, members of the jury, it is the duty of all persons, whether individuals or corporations, who may have suffered loss or damage to their property or business interests by a wrongful act or omission of another, to take all reasonable steps and measures that a reasonably prudent person in like circumstances would take in protecting his property or business interests and to hold out to lessen or prevent further monetary losses on account of injury or harm to his [6381] property interests. This simply means that a person injured or damaged in his property interests by another cannot again by his own failure to perform the above duty to take reasonably prudent care and steps to mitigate or hold down his resulting loss or damage.

Members of the jury, a section of the Robinson-Patman Act which plaintiff relies in this action to recover by its provision that any person who shall be injured in his business or property by reason of anything forbidden in the Antitrust Law shall recover threefold the damage by him sustained in the cost of the suit including a reasonable attorney's fees.

Members of the jury, it is your duty in this case to determine from the evidence before you and applying the instructions as to the law given to you whether plaintiff is entitled to recover any damage.

If you find that the plaintiff is entitled to recover, it is your duty to return a verdict solely in the amount of the actual damage found by you to have been sustained by plaintiff and by the two Perkins corporations, respectively, or any of them, as will thoroughly and fully compensate

him or it for the injuries sustained, no more and no less, and just that, just compensation.

It is then for the Court to deal with the law and to enter judgment for the plaintiff in an amount three times [6382] the damage found by you together with reasonable attorney's fees and the costs of suit shall be determined by the Court.

[6383] The Court: (Continuing) Members of the jury, you will in no event make any finding in this case which is based on speculation or conjecture rather than on competent evidence and inferences reasonably to be drawn therefrom. It is not enough that there has been created in your minds some doubt or suspicion as to the conduct of defendant Standard. The plaintiff must prove every essential element of his claim in such a nature as carries a conviction in your minds such as would influence you in the conduct of your own business and daily affairs. This is so because in all cases the party having the affirmative of the issue has the burden of proof. So here the burden is on the plaintiff to prove every essential element of his case by a preponderance of all of the evidence. If the proof fails to establish any essential element of the plaintiff's case by a preponderance of the evidence, then you must find for the defendant Standard on that phase.

Members of the jury, under this burden of proof, the plaintiff must show by a preponderance of all of the evidence in the case that the claimed injury and resulting damage to the property and the business interest of himself, Perkins of Oregon and Perkins of Washington respectively, and the amount of such damage was approximately caused by some act or omission of discrimination on the part of the defendant Standard in violation of the act in any one or [6384] more of the particulars claimed by the plaintiff. In this connection, by way of a definition of the phrase "proximate cause", you are instructed that an injury or damage to a plaintiff is proximately caused by an act or an omission on the part of the defendant whenever it appears that the act or omission played a substantial part in

actually bringing about or causing the injury or damage and it further appears that the injury or damage was either a direct result or a reasonable, probable sequence of the act or omission. Likewise and by the same token, the burden is upon the defendant to prove every essential element of its defense of good faith meeting of competition by a preponderance of all of the evidence.

If the defendant fails to make such proof in this regard, then the defendant has failed to affirmatively establish its claimed defense.

A preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds the lease that what is sought to be proved is more likely than not true.

Members of the jury, you are instructed that your power of judging the effect of the evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence. There are, [6385] generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of the case. One is direct evidence, such as the testimony of an eye witness or a party to an event, an occurrence or transaction, and such as documentary, picture, or other tangible evidence. You are expected to take into account and consider all of the evidence received in the case whether orally or in writing. There is no particular rule of law in this type of case which gives any special emphasis or importance to oral as distinguished from written testimony or the reverse. You may be more persuaded by oral testimony or you may be more persuaded by the written record. The question is one for you, and you are to determine which you believe to carry the better credence and reliability. In any event, there is no rule that one type of evidence is automatically to be preferred to another type.

The other is in direct or circumstantial evidence, the proof of a chain of circumstances which reasonably points to the existence or non-existence of certain facts. As a

general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that the jury finds the facts in accordance with a preponderance of all of the evidence before you, whether it be direct or circumstantial.

Then bear in mind that the statements and the arguments [6386] of counsel are not evidence in the case unless they were made by way of an admission or a stipulation as to agreed facts. When the attorneys on both sides stipulate or agree as to the existence of the fact, we must accept the stipulation as evidence and regard that fact as conclusively proven. The evidence in this case consists of the pretrial admitted facts which were called to your attention, the sworn testimony of the witnesses for all parties, and the parties themselves, all exhibits which have been received in evidence, all facts which have been admitted or stipulated to by the attorneys in Court, and all applicable presumptions stated in these instructions. Also, any pretrial answers to the interrogatories and admissions of fact made by the parties and which have been placed before you in this case.

You will likewise regard these pretrial answers to interrogatories, admissions of fact, and agreed facts as conclusively proved. You are to consider only the evidence in the case, but in your consideration of the evidence you are not limited to the bald statements of the witnesses, the exhibits, and the stipulated to or the agreed facts. On the contrary, you are permitted to draw from facts which you have found to have been proven such reasonable inferences as being justified in the light of your own experiences.

[6387] An inference is a deduction or a conclusion which reason or common sense leads us to draw from facts which we know have been proven. A presumption is a conclusion which the law requires the jury to make from particular facts in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary, but unless so out-



weighed, the jury are bound to find in accordance with the legal presumption. Unless and until outweighed by other evidence in this case to the contrary, the law presumes that all persons have obeyed the law, and performed their legal duties, that a witness speaks the truth, that official duty has been regularly performed, that private transactions have been fair and regular, that the ordinary course of business has been followed, that things have happened according to the ordinary course and nature and the ordinary habits of life.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses which do not produce in your minds belief in the likelihood of truth as against the testimony of a less number of witnesses or other evidence which does not produce such belief in your minds. The test is not which side brings the greater number of witnesses or presents the greater quantity of evidence but which witness and which evidence [6388] appeals to your minds as being most accurate and otherwise trustworthy.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. As you were told, a witness is presumed to speak the truth, but this presumption may be outweighed by the manner in which the witness testifies; by the character of the testimony given or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, his motives and his state of mind, and the demeanor and manner while he was on the stand. Consider also any relation each witness may bear to the other side of the case, the manner in which the witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence.



Inconsistencies and discrepancies in the testimony of witnesses or between the testimony of different witnesses may or may not cause you to discredit their testimony. Two or more persons witnessing an incident or a transaction may see it or hear it differently. An innocent misrecollection like a failure of recollection is certainly not an uncommon experience to any of us. In weighing the effect [6389] of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail or whether the discrepancy results from an innocent error as from willful falsehood.

If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witnesses made statements which are inconsistent with the witness' present testimony. If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you think it deserves. If the witness is shown knowingly to have testified falsely concerning any material matter, you have the right to distrust such witness' testimony in other particulars and you may reject all of the testimony of that witness or give it such credibility as you think it deserves.

You are instructed that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is within the power of one side to produce and of the other to contradict. Therefore, if weaker or less satisfactory evidence is offered by the party [6390] when it appears that stronger or more satisfactory evidence was within the power of the party to produce, the evidence offered should be viewed by you with distrust.

Members of the jury, both the plaintiff and the defendant have placed into the record before you many summaries,

diagrams, graphs, photographic material, maps and charts which they claim tend to show pictorially their claims, thinkings, theories and analysis of the evidence before you. So in this connection you are instructed that the testimony of accountants, photographers, analysts, and the like, and any summary, diagrams, graphs, photographic material, maps and charts prepared by any of them and admitted in evidence are competent for the purpose of explaining facts disclosed by their testimony or books of record and other documents which are in evidence. However, such charts or diagrams or summaries are not in and of themselves evidence or proof of any fact. So if you should find that such charts, diagrams or summaries do not reflect facts and figures shown by the testimony, books, records, documents or other evidence in the case, you must disregard it. That is to say such charts or diagrams or summaries are used only as a matter of convenience, and unless you find that they are true summaries of facts and figures shown by the evidence in the case, you are to disregard them entirely.

The rules of evidence do not ordinarily permit the [6391] opinion of a witness to be received in evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study, and experience has become an expert in an art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert's opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. It is purely advisory to you. Give it the weight to which you deem it entitled; whether it be great or slight, and you may accept or reject it according to your judgment for the reasons given for it.

It is your duty to weigh the evidence calmly and dispassionately, to regard the interest of the party to the action as interests of strangers, to decide the issues upon the merits, and to arrive at your conclusions without any con-

sideration of the financial ability of one or the necessities of another, and without regard to what effect, if any, your verdict may have upon the future welfare of the parties. Jurors are officers of the Court, and act judiciously and disinterestedly and with an earnest desire to determine and declare the truth. In determining the facts as to liability and non-liability and in fixing damages, if any, you should act and deliberate impartially, without sympathy, antipathy, and pity. In doing so, you [6392] will make a mark for justice. A

Your verdict must represent the considered judgment in each juror. In order to return the verdict, it is necessary that each juror agree thereto. That is, your verdicts must be unanimous. It is your duty as jurors to consult with one another and to deliberate with the view of reaching an agreement if you can do so without violence to your individual judgment. In the course of your deliberations, do not hesitate to reexamine your own views, change your opinion in the event that it is erroneous, but do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow juror or for the mere purpose of returning a verdict.

When you retire to the jury room, you should elect from one of your numbers a foreman to act as your chairman throughout your deliberations and to be your spokesman in Court.

You will be supplied with these forms of verdicts. The first one in my hands reads: "We, the jury, being first duly sworn to well and truly try the above entitled cause, find our verdict in favor of the defendant Standard Oil Company of California and against the plaintiff Clyde Perkins on the alleged cause of action of Clyde Perkins individually." Then there follows two additional identical [6393] verdicts except as they apply to the alleged cause of action of Perkins Oil Company of Oregon and, the third, Perkins Oil Company of Washington. Members of the jury, if your verdict in this case be for the defendant on any one or more of the three causes of action alleged by the plain-

tiff, use this form of verdict respectively as to the cause of action involved, cause your foreman to date it and sign it and return it into Court.

The other form of verdict is entitled "Special Verdict for Plaintiff", and it reads: "We, the jury, do herewith return our general verdict in favor of plaintiff Clyde Perkins and against the defendant Standard Oil Company of California, assessing plaintiff's damage in the amount of blank dollars"—indicating a space there—"and do hereby make our special verdict dividing and apportioning the amount of the said total damage in accordance with our assessments of damage recoverable on the plaintiff's three causes of action as follows: One, we assess the plaintiff's damage on the first cause of action to Clyde Perkins individually in the amount of blank dollars. Two, we assess the plaintiff's damage on the second cause of action of Perkins Oil Company of Oregon in the amount of blank dollars. And third, we assess the plaintiff's damage in the third cause of action of Perkins Oil Company of Washington in the amount of blank dollars." Then there [6394] appears a total space, a date line and a signature line for your foreman.

Members of the jury, if your verdict in this case be for the plaintiff Clyde Perkins on any one or more of the three causes of action, cause your foreman to write in opposite the respective cause or causes of action the amount of damage that you have found that the plaintiff is entitled to recover on account of that cause of action. Then total up one or more of the three and add in the total in the amount expressed where you have returned your verdict against the defendant assessing plaintiff's damage in the amount of blank dollars.

[6395] The Court: (Continuing) Then, members of the jury, you will be supplied a third form of verdict which says general verdict for plaintiff, and it reads as follows:

"We, the jury, being first duly sworn to well and truly try the above-entitled matter, find our verdict in favor of



the plaintiff, Clyde Perkins, and against the defendant, Standard Oil Company of California, and assess the plaintiff's damage to be recovered from the defendant in the sum of (blank) dollars." A date line, and a signature line for your foreman.

So, members of the jury, it follows that if you have found a verdict and assess damage in favor of the plaintiff, Clyde Perkins, against the defendant on any one or more of these causes of action you will have filled in the blanks respectively on your special verdict for plaintiff, then whatever the total amount of that one or more of those awards be, fill that in, the total amount in your general award.

Then, members of the jury, to help the Court deal with a legal problem in the matter, I am going to ask you to make an answer to two interrogatories for the Court and they read as follows: Of course, you will write this out only in the event that you have found that plaintiff, Perkins, is entitled to recover on one or more of the causes of action. And that would be only one or more of the two [6396] corporations' cause of action. You won't be concerned with this special interrogatory in connection with any award that you might find on behalf of Clyde Perkins, individually, but in the event that you find an award in favor of plaintiff, Clyde Perkins, on either one or both of the corporate causes of action, then I will ask you to make answer to these interrogatories and they read.

"We, the jury, having resolved the issue of fact submitted to us and reached our conclusions on the substance of the alternate verdict submitted to us, now upon the request of the Court make answer to the following interrogatories submitted to us:

"1. We have found that the written assignment of the two corporations were typed and executed by the officers sometime prior to March 2, 1959, as claimed by the plaintiff," and there is a space, write in "Yes" or "no."



Now, members of the jury, depending upon what your answer to that is and depending upon whether or not you return a verdict in favor of the defendant on either one or both of the two corporate actions, you will have to deal with this No. 2. We have found that the written assignments of the two corporations were typed and executed by the officers sometime after November 1, 1961, as claimed by the defendant. Answer: Write in "Yes" or "No."

So, members of the jury, in effect, simply what that [6397] means is that if you find that the written assignments were executed in accordance with the contentions of the plaintiff on or before March 2, 1959, you will make answer "yes," and "no" to the other. If your finding in this case is that you find that the written assignments were not executed until after November 1, 1961, in accordance with the defendant's theory of the action, then you would write in answer to the question of being executed after November 1, 1961, and there would be necessarily no other answer to No. 1, because you would have answered the two of them.

I think when you view these and study them, they will be perfectly clear to you.

Now, members of the jury, the law requires before final submission of the case to you that Court and counsel have a conference concerning the instructions that the Court has just given to you. It took me longer than I anticipated that it would, but I did think it would be much better for us to go right through than for you to go to your supper and come back. It would save a lot of time.

You will now be escorted by the bailiff to have your supper and counsel and the Court will deal with this legal matter, so as soon as you come back from supper, you will be brought back into the courtroom where the case will be finally submitted to you.

Now, bear in mind at this stage of the proceedings the [6398] case has not been submitted to you yet for your

deliberations. You will have to wait the conference between counsel and the Court and then when you come back I will resolve that matter, the baliffs will be sworn, and you will be placed in their custody to deliberate upon your verdict.

#### IV. Defendant's Proposed Jury Instructions

[1780]

Revised

##### No. 12

I instruct you as a matter of law that plaintiff cannot recover in this action on account of Standard's payment or contract for the payment of anything of value to or for the benefit of a Chevron dealer or a Signal dealer as compensation or in consideration of any service or facility furnished by any Chevron dealer or Signal dealer such as restroom maintenance or cooperative advertisement, without making such payments available on proportionately equal terms to plaintiff Clyde Perkins, Perkins Oil Company of Oregon or Perkins Oil Company of Washington, because plaintiff or Perkins Oil Company of Oregon and Perkins Oil Company of Washington operated as jobbers, distributors and wholesalers of refined petroleum products and did not operate on the same functional level as Standard's branded retail dealers. Accordingly, I withdraw this issue from your consideration.

(To THE \*COURT: See Clayton Act § 2(d) (15 USC 13(d))

[1783]

Revised

##### No. 14

I instruct you as a matter of law that plaintiff cannot recover damages in this action on account of Standard's contracting to furnish or furnishing or contributing to the furnishing of any service or facility to any Chevron dealer or Signal dealer upon terms not accorded to plaintiff Clyde

Perkins or to Perkins Oil Company of Oregon or Perkins Oil Company of Washington on proportionally equal terms, because plaintiff or Perkins Oil Company of Oregon and Perkins Oil Company of Washington operated as jobbers, distributors and wholesalers of refined petroleum products and did not operate on the same functional level as Standard's branded retail dealers. Accordingly, I withdraw this issue from your consideration.

(To THE COURT: See Clayton Act § 2(e) (15 USC 13(e))

[1784]

No. 14A

I instruct you that before you can award damages to plaintiff on account of any services or facilities furnished by defendant Standard to any Chevron dealer or Signal dealer without making such services or facilities available to plaintiff Clyde Perkins or Perkins Oil Company of Oregon or Perkins Oil Company of Washington on proportionally equal terms, plaintiff must prove to you by a preponderance of the evidence, and you must find, that Standard's discrimination in the furnishing of such services or facilities had an adverse impact on the business of Perkins Oil Company of Oregon or Perkins Oil Company of Washington and I will hereafter instruct you on the showing required to establish that any act of Standard in violation of the statute had such an adverse impact.

(To THE COURT: See Clayton Act §§ 2(e) and 4 (15-USC §§ 13(e) and 15))

[1789]

Revised

No. 19

In order for plaintiff Clyde Perkins to recover damages for injury to the business or property of Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them by reason of any discriminatory payments

by defendant Standard for services or facilities furnished by customers, which as I have previously instructed you is at most the restroom and maintenance allowance and the cooperative advertising allowance, plaintiff must prove by a preponderance of the evidence six elements which make up such a claim. These are: (1) that these corporations were purchasers of gasoline from defendant Standard; and (2) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them were engaged in the business of retailing gasoline to the consuming public; and (3) that defendant Standard paid or contracted for the payment of anything of value to or for the benefit of any Chevron or Signal dealer as compensation or in consideration for any services or facilities furnished by such dealer without making such payments available to Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, on proportionally equal terms; and (4) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them were injured in business or property by reason of such discriminatory payments; and (5) that this injury resulted in damages in an amount which can be determined with reasonable certainty; and (6) that these corporations executed written assignments of their claims against Standard prior to the bringing of this lawsuit on March 2, 1959.

(To THE COURT: See Clayton Act §§ 2(d) and 4 (15 USC §§ 13(d) and 15))

—Defendant's

[1789-A]

Revised

No. 20

In order for plaintiff Clyde Perkins to recover damages for injury to the business or property of Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, by reason of any discrimination in the

furnishing of services or facilities connected with the sale of gasoline by defendant Standard, he must prove by a preponderance of the evidence six elements which make up such a claim. These are: (1) that these corporations were purchasers of gasoline from defendant Standard; and (2) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them were engaged in the business of retailing gasoline to the consuming public; and (3) that defendant Standard contracted to furnish or furnished, or contributed to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of gasoline to, or for the benefit of, any Chevron dealer or Signal dealer but failed to make such services or facilities available on proportionally equal terms to Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them; and (4) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, was injured in business or property by reason of such discrimination; and (5) that this injury resulted in damages in an amount which can be determined with reasonable certainty; and (6) that these corporations executed written assignments of their claims against Standard prior to the bringing of this lawsuit on March 2, 1959:

(To THE COURT: See Clayton Act §§ 2(e) and 4 (15 USC §§ 13(e) and 15))

—Defendant's

[1815]

Revised

No. 44

There is evidence before you to the effect that Standard from time to time gave price assistance to Chevron and Signal dealers in certain areas during periods of depressed retail prices. I instruct you as a matter of law that the fact that Standard extended such price assistance to any



of these Chevron and Signal dealers and did not extend a comparable arrangement to plaintiff or to Perkins Oil Company of Washington or Perkins Oil Company of Oregon does not, in itself, constitute discrimination in price. A discrimination in price would occur only if, after taking into account price assistance payments to dealers, the net price to such dealers was lower than the net amount paid over to Standard for the same products by Clyde Perkins, or Perkins Oil Company of Oregon and Perkins Oil Company of Washington.

[1816]

No. 44A

I further instruct you as a matter of law that the fact that defendant Standard gave price assistance to Chevron and Signal dealers without offering a similar arrangement to plaintiff Clyde A. Perkins or Perkins Oil Company of Oregon or Perkins Oil Company of Washington does not constitute either a discrimination in payments for services and facilities furnished by customers within the meaning of Section 2(d) of the Clayton Act, nor a discrimination in the furnishing of services or facilities within the meaning of Section 2(e) of the Clayton Act.

[1817]

No. 44B

In determining whether a price discrimination existed, you must determine the price charged by defendant Standard for gasoline to plaintiff Clyde Perkins or to Perkins Oil Company of Oregon and Perkins Oil Company of Washington in accord with the definition of the term "net price" which I have heretofore given you. I instruct you as a matter of law that in determining Standard's net price to plaintiff Clyde Perkins or to Perkins Oil Company of Oregon or Perkins Oil Company of Washington you cannot take into account the laid-down cost incurred by Perkins Oil Company of Oregon or Perkins Oil Company of Wash-

ington, because the cost of hauling or any other cost of distribution incurred by Perkins Oil Company of Oregon or Perkins Oil Company of Washington was not a part of the price paid to Standard.

[1818]

Revised

No. 45

The evidence before you indicates that the amount which was to be paid over by plaintiff Clyde Perkins to Standard for each gallon of gasoline received from Standard was computed by deducting from Standard's posted tank truck price at the point to which such delivery of gasoline was made the applicable commission and, further, an amount equal to the common carrier freight rate covering the haul from the Standard supply terminal involved to the point of destination.

The evidence further shows that, depending on the point of destination involved, this so-called freight allowance was either reflected in the invoice or was credited to Perkins' account in the form of a month-end credit.

I instruct you as a matter of law that in determining the net price paid, or the net proceeds payable, by plaintiff Clyde Perkins to Standard for each gallon of gasoline, you must reduce such price or such net proceeds payable by the amount of this so-called "freight allowance" because it was part of the original terms under which the gasoline was delivered by Standard. Clyde Perkins, at the time of delivery, had a contractual right to this so-called freight allowance.

[1824]

No. 49

With respect to the prices charged by defendant Standard to Signal Oil and Gas Company for deliveries of gasoline at Willbridge, Oregon, I instruct you as a matter of law that the evidence before you indicates without contradiction

that such liftings commenced in the latter part of August, 1956. I further instruct you that there is no evidence which would allow you to find that during the period from August, 1956, through December 31, 1956, the price charged Signal Oil and Gas Company by Standard for gasoline delivered at Willbridge, Oregon, was lower than the price paid, or the amount accounted for, to Standard by plaintiff Clyde Perkins during that period for gasoline of the same type lifted at Willbridge. Accordingly, I instruct you that you cannot award plaintiff damages for any claimed discrimination in price in the sale of gasoline by Standard to Signal Oil and Gas Company at Willbridge, Oregon, during the period from August, 1956, to and including December 31, 1956, and I am withdrawing this issue from your consideration.

[1825]

Revised

## No. 50

The evidence before you indicates that in January of 1957 defendant Standard paid to Signal Oil and Gas Company an amount computed on the basis of the gasoline gallonage delivered by Standard to Signal Oil and Gas Company during the period from March 1, 1956 to December 31, 1956. There is no evidence before you from which you could find that Standard agreed to make such an adjustment prior to January of 1957. Accordingly, such payment, as a matter of law, could not have had an adverse competitive impact on plaintiff or on Perkins Oil Company of Oregon or Perkins Oil Company of Washington prior to January, 1957, when Standard agreed to make such payment.

[1826]

## No. 50A

The evidence before you conclusively establishes that Signal Oil and Gas Company, Western Hyway Oil Company and Regal Stations Co. are separate and distinct corpora-

tions. Accordingly, I instruct you as a matter of law that unless plaintiff has proved by a preponderance of the evidence that, after receipt of this payment in 1957, Signal Oil and Gas Company passed it on in whole or in part in some manner to Western Hyway Oil Company and that Western Hyway Oil Company in turn passed such advantage on to Regal Stations Co., you cannot find that such payment ever had an adverse competitive impact on the business or property of plaintiff or of Perkins Oil Company of Oregon or Perkins Oil Company of Washington.

[1828]

No. 54A

The evidence before you establishes that defendant Standard contracted with plaintiff Clyde Perkins as a jobber of refined petroleum products and that Perkins Oil Company of Oregon and Perkins Oil Company of Washington in disposing of the gasoline supplied by defendant Standard were engaged in business as jobbers and wholesalers of refined petroleum products. Accordingly, I instruct you that defendant Standard did not violate Sections 2(d) or 2(e) of the Act by giving restroom and maintenance allowances to Chevron and Signal dealers by making available cooperative advertising allowances to Chevron dealers or by painting the stations of its branded dealers or delivering gasoline to their stations from its bulk plants without charge, or by extending to Chevron dealers a credit card arrangement under which these dealers could have their customers charge purchases on Standard's credit cards, because Standard can reasonably classify its trade customers into wholesalers and retailers and extend different arrangements to each class of customer.

[1839]

No. 64

I instruct you as a matter of law that plaintiff Clyde Perkins cannot recover damages in this action for injury which he may have suffered as a stockholder, officer or di-

rector of Perkins Oil Company of Oregon or Perkins Oil Company of Washington, whether by a decline of the value of any stock which he may have owned in these corporations or otherwise, and the issue of any such damage is withdrawn from your consideration.

(To THE COURT: See *Martens v. Barrett*, (5 Cir. 1957) 245 F2d 844; *Bookout v. Schine Chain Theatres*, (2 Cir. 1958) 253 F2d 292; *Loeb v. Eastman Kodak Co.*, (3 Cir. 1910) 183 Fed 704; *Fleischer v. A.A.P., Inc.*, (SD NY 1959) 180 F Supp 717)

[1840]

No. 65

I instruct you as a matter of law that plaintiff Clyde Perkins cannot recover in this action for any detriment which he may have suffered by reason of the fact, if it be a fact, that Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or any other person, owed moneys to plaintiff Clyde Perkins and that there was delay in the payments of such debts owing to plaintiff or a failure to make payment in full on such debts owed to plaintiff and, accordingly, I withdraw the issue of any such damage from your consideration.

(To THE COURT: See *Loeb v. Eastman Kodak Co.*, (3 Cir. 1910) 183 Fed 704; *Westmoreland Asbestos Co. v. Johns-Manville Corp.*, (SD NY 1939) 30 F Supp 389, aff'd per curiam (2 Cir. 1940) 113 F2d 114; *Gerli v. Silk Ass'n of America*, (SD NY 1929) 36 F2d 959)

[1843]

No. 68

Plaintiff has introduced testimony in this case to the effect that he may have had some understanding either with Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or with Allen Perkins and Marvin Lennington, that he would receive some brokerage payments from the corporations or from these individuals for



turning over to the corporations the gasoline supplied by Standard under Standard's contracts with Perkins, Powell and Harris, and that no such payemnts were ever made to him. I instruct you as a matter of law that plaintiff Clyde Perkins cannot recover in this action damages for the failure by these corporations or these individuals to make any such brokerage payments, and I accordingly withdraw the issue of such alleged damage from your consideration.

(TO THE COURT: See *Robinson v. Stanley Home Products, Inc.*, (D Mass 1959) 178 F Supp 230, aff'd (1 Cir. 1959) 272 F2d 601; *Miley v. John Hancock Mutual Life Insurance Co.*, (D Mass 1957) 148 F Supp 299, aff'd per curiam (1 Cir. 1957) 242 F2d 758, cert. den. (1957), 355 US 828; *Productive Inventions v. Trico Products Corp.*, (2 Cir. 1955) 224 F2d 678, cert. den. (1956) 350 US 936; see also *United Mine Workers of America v. Osborne Mining Co.*, (6 Cir. 1960) 279 F2d 716, cert. den. (1960) 364 US 881)

[1849]

No. 73A

Before you can find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington were injured in business or property by any restroom or maintenance allowance or any cooperative advertising allowance which Standard may have extended to its branded dealers or by reason of any services or facilities furnished by Standard to its branded dealers, plaintiff must prove by a preponderance of the evidence: (1) that retail stations operated by Perkins Oil Company of Oregon or Perkins Oil Company of Washington or by persons supplied by these corporations directly or through distributors lost customers to Chevron stations or Signal stations because of the discriminatory advantage possessed by such Chevron or Signal stations; or (2) that Perkins Oil Company of Oregon or Perkins Oil Company of Washington lost profits on sales of gasoline to customers because of additional expen-

ditures or reductions in the price of gasoline to such customers required to help these customers retain their retail customers against the competition of Standard's branded dealers to whom such payments were made or such services or facilities were furnished.

[1851]

Revised

No. 75

I instruct you as a matter of law that there is no evidence in the record from which you could find that Signal Oil and Gas Company itself was a competitor of Perkins Oil Company of Oregon or Perkins Oil Company of Washington. By this I mean that there is no evidence in the record from which you could find that Signal Oil and Gas Company itself solicited customers of Perkins Oil Company of Oregon or Perkins Oil Company of Washington. Accordingly, plaintiff must prove by a preponderance of the evidence that a purchaser from Signal Oil and Gas Company such as Western Highway Oil Company was a competitor of Perkins Oil Company of Oregon or Perkins Oil Company of Washington, or a customer of either of these companies. In order to recover for injury on these levels of competition, plaintiff must show by a preponderance of the evidence that any price advantage which Signal Oil and Gas Company may have enjoyed was passed on by it to the purchaser such as Western Highway Oil Company who was the competitor of the Perkins corporations or their customers. If you find that the price charged by Signal Oil and Gas Company to its purchaser such as Western Highway Oil Company was higher than the proceeds or price payable to Standard by Clyde A. Perkins, then you must find that neither Clyde A. Perkins nor Perkins Oil Company of Oregon nor Perkins Oil Company of Washington were injured by the lower price charged Signal Oil and Gas Company by Standard.

[1852]

No. 76

Plaintiff has claimed that a customer of Perkins Oil Company of Washington, Les Carter Tire Service, was taken away by Ben Harris, a purchaser from Signal Oil and Gas Company. The evidence before you conclusively shows that from September or October of 1955 on, Les Carter Tire Service received its supply of gasoline from Westway Petroleum Company, a subsidiary of Union Oil Company of California, and took no gasoline from either Perkins Oil Company of Washington or Ben Harris. I specifically instruct you that plaintiff cannot recover in this action damages for the loss of the Les Carter account to Westway.

[1853]

No. 77

Plaintiff has claimed that prior to the loss of the Les Carter account to Westway he lost sales of gasoline because Les Carter purchased at a lower price from Ben Harris, a customer of Signal Oil and Gas Company. I instruct you as a matter of law that the evidence before you conclusively shows that Les Carter was operating in Centralia and in Seattle and that Perkins Oil Company of Washington did not at any time market defendant Standard's gasoline in Seattle. I further instruct you that plaintiff has failed to show that Ben Harris made sales to Les Carter in Centralia, which is the only area in which Perkins Oil Company of Washington was making sales to Les Carter of Standard's gasoline. Accordingly, I instruct you as a matter of law that plaintiff cannot recover in this action damages for any losses of sales by Perkins Oil Company of Washington to the Les Carter account, and I am withdrawing this issue from your consideration.

[1854]

No. 78

There is evidence before you from which you can find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington, at various times, purchased petroleum

products from suppliers other than defendant Standard. I instruct you as a matter of law that even if you find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington lost sales to a favored purchaser of Standard or to a customer from a favored purchaser of Standard to whom any price or other advantage was handed on, you must nevertheless find for defendant Standard on that issue unless plaintiff has proved by a preponderance of the evidence that at the time such loss in sales occurred, Perkins Oil Company of Oregon or Perkins Oil Company of Washington was supplying the customer involved with gasoline supplied by Standard, and not with gasoline supplied by by a competitor of Standard.

I specifically instruct you that plaintiff cannot recover damages for the loss of the Les Carter account in Seattle, because the evidence shows that Perkins Oil Company of Washington supplied Les Carter at Seattle with Union gasoline and not with gasoline supplied by defendant Standard.

[1855]

No. 79

I instruct you as a matter of law that there is no evidence before you from which you could find that gasoline supplied by Standard to Signal Oil and Gas Company competed with Standard gasoline supplied to plaintiff Clyde Perkins or to Perkins Oil Company of Oregon or to Perkins Oil Company of Washington until the opening of the Regal stations in Portland in the fall of 1956, and I withdraw from your consideration any claim of damages related to Standard's dealings with Signal Oil and Gas Company at a prior time.

[1857]

No. 81

Because of the many economic factors which in the normal course of events affect the success of a commercial enterprise, the law does not allow the tracing of an adverse competitive effect attributed to a price discrimina-

tion to a level below that of the customer of the favored purchaser.

Accordingly, I instruct you that even if you find that defendant Standard has discriminated in price against plaintiff or against Perkins Oil Company of Oregon or Perkins Oil Company of Washington, and even if you further find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington's business was indirectly injured thereby, you must nevertheless find for defendant Standard unless plaintiff has proved by a preponderance of the evidence that the competitive impact from which such injury resulted occurred at the level of competition with the favored purchaser from defendant Standard or with a customer of such favored purchaser to whom such discriminatory advantage was handed on.

(To THE COURT: See Clayton Act, § 2(a) (15 USC § 13(a)); *Klein v. Lionel Corporation*, (3 Cir. 1956) 237 F2d 13, 15)

[1858]

Revised

No. 82

Plaintiff in this action contends that Perkins Oil Company of Oregon and Perkins Oil Company of Washington were injured by reason of certain marketing activities of Regal Stations Co. which operated retail stations in Portland and that said stations sold gasoline supplied by defendant Standard. The evidence before you shows without contradiction that the supply of Regal stations in Portland originated in defendant Standard's sales of gasoline to Signal Oil and Gas Company which in turn resold such gasoline to Western Hyway Oil Company which again in turn resold such gasoline to Regal Stations Co. which operated such stations. The evidence further shows conclusively that Signal Oil and Gas Company, Western Hyway Oil Company and Regal Stations Co. were separate legal entities dealing with each as separate legal entities. I instruct you as a matter of law that plaintiff cannot re



cover damages in this action for injury to his business or property or to the business or property of Perkins Oil Company of Oregon and Perkins Oil Company of Washington which is attributable to any act on the part of Regal Stations Co. since Regal was neither a purchaser from defendant Standard, nor a purchaser from a purchaser from defendant Standard.

(To THE COURT: See Clayton Act § 2(a) (15 USC § 13(a)); *Klein v. Lionel Corporation* (3 Cir. 1956) 237 F2d 13, 15)

[1859]

Revised

No. 84

In this action plaintiff claims, and some of his witnesses have testified, that the opening of the Regal stations in the fall of 1956 in Portland depressed the general level of retail prices at service stations in Portland and vicinity. I instruct you as a matter of law that even if this testimony is true, you cannot find that any act or price of Standard could have proximately caused the depressed retail prices attributed to Regal's marketing practices, because at the time of Regal's opening and during the remaining months of Regal's operations in 1956 Signal Oil and Gas Company did not have a price advantage over plaintiff Clyde Perkins or Perkins Oil Company of Oregon or Perkins Oil Company of Washington. Therefore, you cannot award plaintiff damages for any injury which he attributes to the activity of Regal stations.

[1862]

No. 86

I instruct you that under the antitrust laws it would have been illegal for Standard to attempt to control the prices at which Regal stations sold gasoline to the public, or to control the use by Regal of advertisements, giveaways, price signs or other marketing methods which Regal stations are alleged to have employed. Unless plain-

tiff has shown by a preponderance of the evidence that a price advantage was given to Signal Oil and Gas Company by Standard, and that this price advantage proximately caused, or substantially contributed to, the adoption by Regal of those marketing methods which are claimed to have injured the business of Perkins Oil Company of Oregon or Perkins Oil Company of Washington, plaintiff cannot recover for any such alleged injury. You cannot award plaintiff damages merely because Regal marketed gasoline manufactured by Standard by use of marketing methods which adversely affected the retail gasoline prices in the Portland area, and thus caused losses to plaintiff or to Perkins Oil Company of Oregon or to Perkins Oil Company of Washington.

[1870]

No. 92A

Plaintiff has submitted to you in the form of Exhibits 82E, 82F, 82J, 82K, 82L and 82M certain computations of the amount of damage which he claims was sustained by him and by Perkins Oil Company of Oregon and by Perkins Oil Company of Washington. Each of these schedules assumes that Perkins Oil Company of Oregon and Perkins Oil Company of Washington had a reasonable expectation of increasing its sales of gasoline by 10 per cent each year during the years 1955, 1956 and 1957. I instruct you as a matter of law that there is no evidence before you which would allow you to find that a 10 per cent annual increase in volume was a reasonable expectation for the sales of these two corporations and I instruct you that you cannot award plaintiff damages in an amount reflecting such an assumed 10 per cent increase in the sales volume of these corporations.

[1873]

No. 93A

I instruct you as a matter of law that plaintiff cannot recover damages in this action by reason of any alleged loss of sales of fuel oils by Perkins Oil Company of Oregon

or Perkins Oil Company of Washington unless he has shown by a preponderance of the evidence that these corporations, or either of them, sold gasoline and fuel oils to a customer, and the corporation lost the gasoline business of such customer to Signal Oil and Gas Company or to a customer from Signal Oil and Gas Company by reason of lower prices offered to this customer, and that as a result of such loss of such gasoline sales the corporation also lost the fuel oil business of such former customer.

[1874]

No. 93B

Plaintiff in this action has claimed an amount of damages attributed by him to an alleged loss of sales of furnace oil, stove oil and other fuel oils or to an alleged decline in value of the fuel oil business of Perkins Oil Company of Oregon and Perkins Oil Company of Washington based on a claimed decline of such fuel oil sales. I have heretofore instructed you that there is no evidence before you that defendant Standard has discriminated in the sale of these products. Accordingly, plaintiff cannot recover any damages on account of lost fuel oil sales unless he has proved that defendant Standard discriminated in the sale of gasoline and that losses of sales of gasoline attributable to such discrimination necessarily caused a loss of sales of fuel oils.

I instruct you further that even if you find that losses of fuel oil sales occurred and were proximately caused by defendant's discrimination in the sale of gasoline, you cannot award plaintiff damages in excess of the net profits which Perkins Oil Company of Oregon and Perkins Oil Company of Washington could reasonably have expected from such lost fuel oil sales, and in no event can you award damages for loss of any prospective net profits for a period beyond December, 1957.

(To THE COURT: Authority for last paragraph, limiting recovery for loss of prospective profits to contract period: *Western Oil & Fuel Company v. Kemp* (8 Cir. 1957) 245

F2d 633; *Alexander v. Texas Company* (WD La 1957) 149 F Supp 37); *Chevrolet Motor Co. v. McCullough Motor Co.* (9 Cir. 1925) 6 F2d 212; *In re Petroleum Carriers Co.* (D Minn 1954) 121 F Supp 520; *Pecarovich v. Becker* (1952) 113 Cal App2d 309, 248 P2d 123; *Fife v. Great Atlantic & Pacific Tea Co.* (1950) 166 Pa Super 77, 70 Atl2d 369, cert den (1950) 340 US 837).

Defendant's

[1881]

No. 98A

I instruct you as a matter of law that plaintiff cannot claim damages in this action on the basis of a computation such as is reflected in plaintiff's Exhibits 82C and 82D by taking the price paid by Signal Oil and Gas Company to Standard for gasoline at Willbridge from and after August 27, 1956, when such sales commenced, and project it backwards in time into the first part of 1956 and into 1955 and claim damages on account of such differential on the gallonage which Standard supplied him during the period from March 2, 1955 to August 27, 1956, because during that period there were no sales at Willbridge to Signal Oil and Gas Company.

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**V. Defendant's Objections to Instructions**

See X.C, pp. 456-477, *infra*.

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**VI. Special Interrogatories to the Jury**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

**SPECIAL INTERROGATORIES TO THE JURY**

We, the jury, having resolved the issues of fact submitted to us and reached our conclusions on the substance of the alternate verdict submitted to us, now, upon the

request of the Court, make answers to the two following interrogatories submitted to us:

**Interrogatory No. 1**

We have found that the written assignments of the two corporations were typed and executed by the officers sometime prior to March 2, 1959, as claimed by the plaintiff.

Answer: YES

(Write in "yes" or "no".)

**Interrogatory No. 2**

We have found that the written assignments of the two corporations were typed and executed by the officers sometime after November 1, 1961, as claimed by the defendant.

Answer: NO

(Write in "yes" or "no".)

Dated December 20, 1963.

/s/ DAVID B. ANDERSON  
Foreman

**VII. Special Verdicts for Plaintiff**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

**SPECIAL VERDICTS FOR PLAINTIFF**

We, the jury, do herewith return our general verdict in favor of the plaintiff Clyde Perkins and against the defendant Standard Oil Company of California, assessing plaintiff's damage in the amount of \$336,404.57 and do hereby make our special verdicts dividing and apportioning the amount of said total damage in accordance with



our assessment of damage recoverable on the plaintiff's three causes of action as follows:

- |  |                          |
|--|--------------------------|
| 1) We assessed the plaintiff's damage on the first cause of action of Clyde Perkins individually in the amount of        | <u>\$185,022.52</u>      |
| 2) We assessed the plaintiff's damage on the second cause of action of Perkins Oil Company of Oregon in the amount of    | <u>\$ 84,101.14</u>      |
| 3) We assessed the plaintiff's damage on the third cause of action of Perkins Oil Company of Washington in the amount of | <u>\$ 67,280.91</u>      |
| Total  | <u><u>336,404.57</u></u> |

Dated this 20th day of December, 1963.

/s/ DAVID B. ANDERSON  
Foreman

#### VIII. General Verdict for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

#### GENERAL VERDICT FOR PLAINTIFF

We, the jury, being first duly sworn to well and truly try the above-entitled matter, find our verdict in favor of the plaintiff Clyde Perkins and against the defendant Standard Oil Company of California and assess the plaintiff's damage to be recovered from the defendant in the amount of \$336,404.57.

Dated this 20th day of December, 1963.

/s/ DAVID B. ANDERSON  
Foreman

IX. Opinions of the United States Court of Appeals  
for the Ninth Circuit

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

VS.

CLYDE A. PERKINS, *Appellee.*

[July 11, 1968]

ON MOTION FOR CLARIFICATION

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

In response to Perkins' Motion for Clarification, we make the following amendments to and of the opinion: Immediately preceding the final paragraph is inserted a new paragraph reading:

"In view of the outcome of this appeal, all questions concerning attorneys' fees shall await final disposition of the litigation in the district court or this court."

In addition, the final paragraph is amended to read:

"The judgment is reversed and the cause remanded for a new trial on both liability and damages (including the submission of additional or different evidence pertaining thereto), consistent with the views expressed in this opinion. On the matter of liability, however, since Standard has not questioned the trial court's ruling that Perkins and the Perkins corporations were purchasers within the meaning of the Clayton Act, the contention that Perkins was a consignee for commercial purposes and not a purchaser, will not be available to Standard on retrial."

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

vs.

CLYDE A. PERKINS, *Appellee.*

[July 11, 1968]

## ON PETITION FOR REHEARING

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

Perkins' petition for rehearing is denied. Essentially it is nothing more than a repetition of arguments concerning assignments, which we are satisfied were all adequately considered and correctly passed upon by our written opinion. However, one particular point is not unworthy of brief current comment.

Because Perkins or the Perkins corporations operated or were interested in a few retail service stations, in addition to the wholesale distribution which comprise by far the greater part of their business, we believe it useful to point out that on retrial any recovery on their 2(d) and 2(e) claims for allowances and services proportional to any Standard made to its branded dealers on the retail level should not reflect Perkins' wholesale distribution.

The validity of our cautionary observation that under section 2(d) and its companion 2(e) a seller's obligation for such matters is limited to customers who compete with each other on the same level of distribution is in no wise weakened by the Supreme Court's recent reversal of F.T.C. v. Fred Meyer, Inc., 359 F.2d 351 (9th Cir. 1966) reversed 390 S. Ct. 341 (1968), the decision upon which we relied.

To the contrary, its validity is finally confirmed and settled beyond dispute, for in *Meyer* the Court opined:

"We cannot assume without a clear indication from Congress that § 2(d) was intended to compel the supplier to pay the allowances to a reseller further up the distributive chain who might or might not pass them on to the level where the impact would be felt directly. We conclude that the most reasonable construction of § 2(d) is one which places on the supplier the responsibility for making promotional allowances available to those resellers who compete directly with the favored buyer." (p. 357).

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

VS.

CLYDE A. PERKINS, *Appellee.*

[November 2, 1967]

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

KOELSCH, Circuit Judge.

Clyde A. Perkins brought this suit against the Standard Oil Company of California to recover treble damages for injuries allegedly resulting from Standard's price and

price-related discriminations in the sale of gasoline and oil in violation of Section 2(a), (d) and (e) of the Clayton Act, as amended by the Robinson-Patman Act.

At the conclusion of a protracted trial, the jury rendered its verdict for Perkins and against Standard, assessing damages in the total sum of \$336,404.57.<sup>1</sup>

The court trebled this award and allowed Perkins \$289,000 as an attorney's fee (15 U.S.C. § 15) for a total of \$1,298,213.71. Standard has appealed.

Perkins started in the gasoline and oil business during 1938 as the proprietor of a single service station in the State of Washington. Over the years he acquired many more stations throughout that State and a number in Oregon. In addition, he became a wholesaler in this same territory. There he operated several bulk storage plants and sold gasoline to other wholesalers, to retailers, and to commercial users. In 1945 Perkins, together with two other dealers whose operations were similar to his own, entered into the first of a series of so-called "consignment supply contracts" with Standard, under which Standard sold them all the gasoline and oil which they required. None of the three was interested in the business of any other.

During 1952 Perkins organized two corporations—Perkins of Oregon and Perkins of Washington—to whom he respectively sold his gasoline and oil business and leased

<sup>1</sup> The form is denominated "special verdict." In it the above sum, referred to as the amount of the "general verdict," is divided into three parts, each labeled "special verdict"; each part is allocated to a particular claim as follows:

- |  |              |
|--|--------------|
| "(1) . . . on the first cause of action of Clyde Perkins individually      | \$185,022.52 |
| "(2) on plaintiff's second cause of action of Perkins Oil Co. of Oregon    | 84,101.14    |
| "(3) on plaintiff's third cause of action of Perkins Oil Co. of Washington | 67,280.91    |



all his bulk plants and most of his service stations. The corporations continued to carry on a wholesale business but sublet all service stations, save for one operated by Perkins of Washington in Vancouver, Washington. Standard knew of these transactions but did not negotiate sales contracts with the corporations or terminate the existing one with Perkins. It continued to supply the gasoline and to bill Perkins.

On December 2, 1957 the Perkins businesses were sold to a major oil company and the contract with Standard was terminated.

Fifteen months later, on March 2, 1959, Perkins filed this suit. As ultimately submitted to the jury it comprised three claims: the first, that of Perkins individually; the second, that of Perkins of Oregon; and the third, that of Perkins of Washington.

Broadly stated, Perkins' contention was that throughout a period extending from March 1, 1955, through December 1957, he and the two Perkins corporations sustained injury to business and property because (a) Standard had charged the Signal Oil & Gas Co., and the operators of Standard's Chevron and Signal Service Stations (hereinafter referred to as "Branded Dealers")<sup>2</sup> less for the same grade and quality of petroleum products than Standard had charged him and the two Perkins corporations; (b) Standard had paid the Branded Dealers, but not him and the two Perkins corporations, for services and facilities furnished by the Branded Dealers in connection with the sale of Standard's products; and because (c) Standard likewise furnished said Branded Dealers valuable services not rendered to him

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<sup>2</sup> This is the term applied in the trade to proprietors of retail service stations whom standard authorized to use its brand names in their advertising.

and the two Perkins corporations.<sup>3</sup> He did not contend that his alleged injury resulted from his inability to compete with Standard itself but rather that his injury stemmed from Standard's price favoritism to Signal and the Branded Dealers, which favoritism impaired and destroyed competition between Perkins and certain others of those who sold Standard's products.<sup>4</sup>

The Branded Dealers purchased gasoline and oil from Standard which they in turn sold at retail. With respect to them, Perkins' story is quickly told. Because of Standard's favoritism and discrimination they were able to and did offer lower prices and better services and facilities than Perkins in marketing at retail.

Signal Oil & Gas Co., like Standard, featured in this litigation exclusively as a supplier. It assertedly passed

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<sup>3</sup> The relevant provisions of the Robinson-Patman Act, relied upon by Perkins, are contained in Section 2(a), (d) and (e); they make it unlawful for:

Sec. 2(a) "any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition . . . with any person who . . . knowingly receives the benefit of such discrimination or with customers of any of them;"

Sec. 2(d) "for any person engaged in commerce to pay . . . a customer . . . for any services or facilities furnished by . . . such customer in connection with . . . the offering for sale of any products . . . sold . . . by such person unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities," and

Sec. 2(e) "for any person to discriminate in favor of one purchaser against another purchaser . . . of a commodity bought for resale . . . by . . . furnishing . . . any services . . . connected with the handling, sale, or offering for sale of such commodity not accorded to all purchasers on proportionally equal terms."

<sup>4</sup> Hereinafter, the name "Perkins" includes Perkins individually and also the two Perkins corporations.

on to its customers a large part of the more favorable price that it received from Standard and thus enabled its customers (some of whom were retailers and others jobbers) to undersell Perkins.

Section 2(a) of the Act, in terms, limits the distributing levels on which a supplier's price discrimination will be recognized as potentially injurious to competition. These are: on the level of the supplier-seller in competition with his own customer; on the level of the supplier-seller's customers; and on the level of customers of customers of the supplier-seller.<sup>5</sup>

The record in this case manifests that a substantial part of the damages assessed against Standard with respect to each claim was necessarily rested upon the marketing of gasoline and oil by a corporation known as Regal Stations Company. The conclusion is also inescapable that Regal was not a customer of a customer within the purview of Section 2(a) of the Act.<sup>6</sup> It follows that the detrimental

<sup>5</sup> Mr. Rowe, in his book, "Price Discrimination Under the Robinson-Patman Act," severely questions the validity even of this so-called "third line injury concept" included in Sec. 2(a) of the Act. Saying "this esoteric doctrine appears of dubious validity today" (p. 196) the author argues:

1. That it is doubtful that a causal relationship can exist between the supplier's lower price to a favored customer and injury to competition by that customer's customer with a disfavored customer;
2. Additionally that the concept requires supplier's control over his customer's pricing; this can give rise to serious anti-trust problems of price control.

<sup>6</sup> Regal commenced to retail gasoline and oil in Portland during the summer of 1956 and soon was operating a number of service stations there. It accompanied a well publicized entry into the market with a scale of prices well below that of other retailers and persisted in undercutting other retailers. Perkins took the position, which he supported with substantial evidence, that "While there had been some price disturbances in the Portland area prior to Regal, these were . . . of 'brush fire' dimensions while Regal precipitated a major conflagration"; and he further adduced proof

effect Regal exerted upon competition is not attributable to and would not support an award of damages against Standard; that the whole verdict is tainted, since the amount reflected in it by Regal's conduct cannot be ascertained; and that the judgment must be reversed and a new trial had.

tending to show that the impact of Regal's price policy went far beyond Portland; that it precipitated and sustained a sort of chain-reaction throughout Perkins' entire marketing area, and that it adversely affected both the wholesale and retail business carried on by Perkins.

While the record shows Regal sold Standard gasoline, it also shows that Regal purchased this gasoline from Western Hyway Oil Co., which in turn had purchased it from Signal which had originally purchased from Standard. Even granting that the proof demonstrated Standard uniformly charged Signal substantially less than Perkins, and further granting that Signal likewise passed on to its customer (Hyway) this price advantage, the competition complained of was not that with Signal or Signal's customer, Hyway.

Perkins sought to bring the competition within the statutory bounds. His contention—to again quote from his brief—was that “[b]oth Western Hyway and Regal were controlled subsidiaries of S[ignal] O[il] and G[as].”

It is true that the “close community of interest” discussed in *Press Co. v. N.L.E.B.*, 118 F. 2d 937 (D.C. Cir. 1940), *cert. denied* 313 U.S. 595 (1941), existed between these three corporations: during the relevant period Signal owned 60% of the stock of Western and similarly from the outset and until October 1957, the latter corporation owned 55% of the stock of Regal. Thus Signal was in a position to exercise control over Regal. However, this fact alone is not enough. In *National Lead Co. v. F.T.C.*, 227 F. 2d 825 (7th Cir. 1955), reversed on other grounds, 352 U.S. 419 (1957) a cease and desist order against the parent corporation charged with the unlawful acts of its subsidiaries was set aside. The Court held that to establish substantial identity between parent and subsidiary corporation under the Robinson-Patman Act, more must be shown than the fact that the subsidiaries were wholly owned, that they were controlled by interlocking directors and officers and that their operations were closely correlated. The test was whether the parent exercised such complete control that the subsidiaries' corporate identity was a “mere fiction”—were the subsidiaries “mere tools” of the parent. Similarly in the *Press*



Inasmuch as the case must be returned to the district court and tried anew, we believe it appropriate to briefly comment upon several of Standard's remaining points.

The factual issues of whether or not the two Perkins corporations, prior to the commencement of this action, had assigned their claims to Perkins and whether the assignments were valid need not be relitigated. These issues were the subject of special interrogatories which the jury answered favorably to Perkins. They involved matters that were entirely distinct and separable from the claims themselves; they appear to have been fully developed by the evidence; and they are in no way affected by the error which requires a reversal of the judgment.<sup>7</sup> On the new trial the fact of the assignments will be deemed established.

*Co. case*, cited above, the D.C. Circuit—albeit in a somewhat different context—followed and applied this same basic requirement, saying “Unless, therefore, the community of interest of which we have spoken . . . is enough to wipe out and destroy the corporate structure, the Board's conclusion that Gannett Co. was equally responsible in its corporate capacity for the acts done by Press Co. in its corporate capacity cannot be sustained. Of course, it is true that Gannett Co., as owner of all the voting stock of Press Co., was in a position to dictate its action in any corporate matter, but until legislation is adopted outlawing holding companies this alone, in circumstances like these is not sufficient to annul corporate identity . . . .” (page 945). See also *Baum & Blank, Inc. v. Philco Corp.*, 148 Fed. Supp. 541 (E.D. N.Y. 1957); *Kingston Dry Dock Co. v. Lake Champlain Trans. Co.*, 31 F. 2d 265, 267 (2d Cir. 1929).

In the case before us the record reveals no substantial evidence to show that Signal in fact dictated the corporate decisions of either Western or Regal. Absent such proof, Regal must be deemed a separate and autonomous entity.

<sup>7</sup> Indeed this court has previously passed on the issue. In the related case of *Standard Oil Co. v. Perkins*, 347 F. 2d 379 (9th Cir. 1965) we affirmed the trial court's denial of Standard's motion under Rule 60(b) to set aside the judgment in that case on the grounds that the proof in this case disclosed that these same assignments upon which Perkins had relied were fraudulent and untimely.



The trial judge's ruling, that the relevant four year statute of limitations had not operated upon the assigned claims to bar Perkins' right to maintain suit on them, was correct.

We agree with Standard that if Perkins first asserted the claims on September 12, 1963 when, at the direction of the trial court he supplemented his contentions appearing in the pretrial order with the fact of the assignments, then his right to prosecute a suit on the claims had expired. The claims accrued not later than December 1957, and filing of the complaint in September 1959, would not have tolled the statute. "An amendment setting up such new . . . cause of action will not relate back to the date of the original petition, but will be governed by its own date and if the bar of the statute of limitations or a bar to the right to maintain such new cause of action has intervened, the new cause of action must fail." *Salysers v. United States*, 257 F. 255 (8th Cir. 1919). In the case last cited, the pleadings clearly disclosed that plaintiff's amendment to the complaint introduced into the suit a new claim upon which suit was barred. Here they do not. To the contrary, this record demonstrates with equal clarity that the suit from the time of its commencement included these claims. True, Perkins did not assert the claims as assigned claims, but he did make clear from the outset that he was asserting ownership of all property and property rights injuriously affected and for which he was seeking to recover damages. The supplement merely separated several claims initially improperly commingled into their component parts.

Neither did the court err in submitting to the jury Perkins' claims based upon Standard's alleged Section 2(d) and 2(e) violations. There was some evidence that Perkins and the Perkins corporations operated some service stations and, to that extent, Standard was obliged, under those sections, to make the same proportional payments and allowances to Perkins for such items as service station rest room maintenance, painting of service stations,

advertising and credit card privileges, as it did to the Branded Dealers. We perhaps should add, a seller's obligation extends only to customers who compete with each other on the same functional level of distribution. *Tri Valley Packing Ass'n. v. F.T.C.*, 329 F. 2d 694 (9th Cir. 1964). And a customer who functions both as a retailer and a wholesaler is entitled to receive proportionately equal treatment with respect to payments and services that the seller gives a competing retailer; but he is not entitled to such allowances with respect to his wholesale business as well.<sup>8</sup>

Standard's assignments also concern the trial court's rulings on evidence and the giving of instructions relating to damages. A brief discussion of several is warranted.

It will be recalled that the verdict comprised three claims: the claim of Perkins individually, and that of Perkins of Oregon, and Perkins of Washington.

With respect to Perkins' own claim the court, over Standard's objection, permitted him to show on the issue of

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<sup>8</sup> A difference of legal opinion exists over the reach of Sec. 2(d) and 2(e) obligation. See Rowe "Price Discrimination Under the Robinson-Patman Act," 1964 Supplement, p. 89. The author, however, points out on page 396 of his original text:

"... the F.T.C. 1960 guides indicate a limitation of the supplier's obligations ... to competing 'customers' and define 'customer' as someone who buys directly from the seller or his agent or broker. This resolution of the issue properly balances the possibility of law avoidance against the practical difficulties of computing appropriate benefits accruing to wholesalers and other intermediate distributors ... and the burdens of conditioning all suppliers promotional campaigns at the retail level on their simultaneous subsidization of other distributors along the way."

This was the view taken by this court in *Tri-Valley* and recently reaffirmed in *F.T.C. v. Fred Meyer, Inc.*, 359 F. 2d 351 (9th Cir. 1966). We note that this precise question is presently before the Supreme Court pursuant to a grant of certiorari in the *Meyer* case at the last term. 386 U.S. 907 (1967).

damages that the Perkins corporations did not pay him 1 (a) an agreed brokerage fee for securing their gasoline; (b) rentals on leases of service stations and other property, and (c) other indebtedness; (2) that he was unable to collect rentals for service stations leased to independent operators and (3) that the going concern value of his interest, as owner and lessor and as prime lessee and sublessee of service stations and bulk plants, substantially diminished.

We conclude: that items 1(a), (b) and (c) and 2 were not elements of injury properly the subject of damages, but that item 3 was. It follows that the rulings of the court were in part erroneous and in part right.

The problem is one of proximate cause. A person claiming damages must show that he was within the "target area" of the economy directly affected by the unlawful competitive practices, for "the rule is that one who is only *incidentally* injured by the violation of the antitrust laws—the bystander who was hit but not aimed at—cannot recover against the violator." *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 363 (9th Cir. 1955); *Conference of Studio Unions v. Loew's, Inc.*, 193 F. 2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952).

The solution is not an easy one and admittedly there exists a difference of judicial opinion as to what constitutes a direct (as distinguished from a remote or consequential) injury to business or property within the meaning of Section 4 of the Clayton Act (15 U.S.C. §15).

*Congress Building Corp. v. Loew's, Inc.*, 246 F. 2d 587 (7th Cir. 1957), contains an exhaustive canvass of many cases coupled with an illuminating discussion of the matter. In that decision the Seventh Circuit, noting that "the courts have uniformly denied recovery to stockholders . . . creditors . . . and deposed officers of a corporation . . . who claimed injury as a result of alleged antitrust violations . . .," suggests as a reason that "[t]o permit individual stockholder recovery would run counter to the traditional

treatment of a corporate injury that the corporation is the proper party to redress corporate wrongs. And direct recovery by the individual creditor would give him a preference over other creditors of the insolvent business and such recovery may act to thwart the policy of the bankruptcy laws. Further, the number of stockholders and creditors might produce an insurmountable problem of multiplicity of suits." (pp. 590-591). However, the court went on to hold that a non-operating owner-lessor of a motion picture theatre had a recognizable claim for damages against its lessee and a third party who had conspired together to reduce the business at the theatre. The court pointed out that such a violation might cause injury to the reversion of the owner-lessor and that such an injury was one directly suffered. This court, in *Steiner v. 20th Century-Fox Film Corp.*, 232 F. 2d 190 (9th Cir. 1956), upon identical facts and using much the same reasoning, reached the same conclusion. However, in *Steiner* we noted that *Harrison v. Paramount Pictures, Inc.*, 115 F. Supp. 312 (D.C. E.D. Pa.) affirmed per curiam, 211 F. 2d 405 (3d Cir. 1954), cert. denied, 348 U.S. 828, a case in which the lessor was not permitted to maintain a suit, was not factually similar "because in *Steiner* the lessee was a party to the unlawful combination, whereas in *Harrison* the lessee was not." Standard vigorously argues that the distinction is material and that the net effect of *Steiner* is that an actionable injury can result only where a conspiracy to injure the lessor is entered into between the lessee and a third person. We disagree. In our view, while the fact that the lessee did not participate in the wrongful act might give rise to problems of apportionment of damages between lessor and lessee for their respective injuries and be urged as giving rise to multiplicity of suits, these reasons do not militate in favor of the wrongdoer. As said in *Congress Building Corp. v. Loew's, Inc.*, *supra*, (at 594) "The problem of multiplicity of suits . . . is not similar to stockholder-creditor cases where a single entity exists to redress the wrong, for here



there is no such entity. In fact, if the lessor cannot sue there will be no private redress for the defendant's wrongful acts. Furthermore, multiplicity is always present where the acts of the tortfeasor injure more than one individual."<sup>9</sup>

Many of Perkins' exhibits relating to damages treated the three Perkins businesses as one and reflected only consolidated sales, losses, etc. It was thus difficult, if not impossible, for the jury to rationally determine whether a particular business had suffered injury and if so to allocate damages amongst the three of them. In addition, such a combination of components could readily create a distorted image by making it appear, contrary to the fact, that all had been injured. So far as practicable, proof of the items of damage peculiar to one claim should always be kept separate from that of another. This is particularly true in a case as factually complicated as this one. Additionally,

<sup>9</sup> On the basis of this reasoning, Exhibit 93-E, a chart recapitulating rentals lost by the Perkins corporations on subleases to independent operators of service stations, should not have been admitted.

However, evidence showing a decline in gasoline sales by a lessor's tenant on the leased premises was properly admitted as tending to show injury to the lessor's interest in the leased property and the monetary amount of the injury. We note that Exhibits 82-J, L, and M contain general recitals that the computation is of the "Loss in Value of Business" and "Depreciation in going concern value. . . ." Such designations could well mislead a jury; moreover, it appears that the figures included business other than that done at service stations. A lessor has no interest in the business as such and the court should make clear the purpose for which the proof may be considered. Additionally, it appears that no foundation existed for the conclusion of Perkins' expert witness (reflected in the chart) that the sales volume of the leased stations would have progressively increased each year throughout the claim period at a specified rate over the base year but for Standard's asserted discrimination. Such an estimate is competent, but only if based upon facts which fairly permit the opinion.



we note a common vice inherent in all these exhibits. The computations appearing in them were predicated in whole or in part upon the premise that Perkins was unable to compete with Regal because of Standard's price discrimination. But, as pointed out earlier in this opinion, Section 2(a) of the Act does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard. On that ground alone none of these exhibits should have been admitted into evidence.

Among the defenses urged by Standard was the one provided for in Section 2(b) of the Act. (15 U.S.C. § 13(b)). That section, in a proviso, permits a discriminating seller to rebut "the prima facie case . . . by showing that his lower price . . . to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor . . . ."

As part of its proof Standard adduced testimony from one of its officers to the effect that six months before Standard lowered its price to Signal, he was informed that a competitor, Union Oil Company, had made Signal such an offer and that Standard's reduction which followed was generated by this intelligence. The court refused as irrelevant Standard's offer of sales records from Union's files, dated several months after Standard's price reduction. Despite its *ex post facto* nature, this proof would have afforded the basis for an inference that the prices were those offered during the critical period by Union; thus the records would have served a dual purpose as direct evidence of the Union's prices and to corroborate the testimony of Standard's witness.

Standard makes a more serious objection with reference to the court's instruction on this issue. The jury was told that to establish the affirmative defense the burden was upon Standard to prove its competitor had made "a definite offer" of which it (Standard) was aware. The instruction, standing alone, was clearly erroneous, for the

Supreme Court declared in *Trade Commission v. Staley Co.*, 324 U.S. 746, 759-60 (1945) that "Section 2(b) does not require the seller to justify price discriminations by showing that in fact they met a competitive price. . . .

We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally lower price of a competitor."<sup>10</sup>

Other assignments urged by Standard in its brief involve matters not likely to occur during the course of another trial and we therefore, in order to avoid unduly prolonging this opinion, do not discuss them. Our failure to do so, however, is not to be taken as an appellate approval of every ruling not specifically discussed herein.

The judgment is reversed and the cause remanded for a new trial consistent with the views expressed in this opinion.

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<sup>10</sup> The court also gave an instruction, requested by Standard, which correctly stated the rule.

**X. Excerpts From Transcript of Proceedings****A. Testimony**

[125]

**Clyde A. Perkins**

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination****By Mr. Tilbury:**

Q. Would you state your name, please. A. Clyde Perkins.

Q. Where do you live, Mr. Perkins? A. 509 West 36th Street, Vancouver, Washington.

Q. How long have you lived in the Vancouver area? A. I've lived in the Vancouver area since 1926.

Q. Prior to that time, where did you live? A. Yakima, Washington.

Q. What occupation do you follow at the present time? A. Oil business.

Q. In what capacity? A. Well, at the present time, we're doing a little brokerage business and taking care of our real estate that we have that is used in the oil business.

Mr. Hilliard: Your Honor—

The Court: Yes.

[126] Mr. Hilliard: —excuse me, counsel. We have used a term by the witness that is not specific. When speaking of the oil business, he said, "We did this", and in this lawsuit we are involved with Clyde Perkins individually, the Perkins Oil Company of Oregon and the Perkins Oil Company of Washington, the partnership of Lennington and L. Allen Perkins.

The Court: Yes. That pinpoints it initially the necessity that counsel will have to constantly bear in mind in addressing questions that when we have the witness talking with reference to Mr. Perkins and the two corporations, that they be identified as such and that there be no use of the pronoun "We" or "They". I suppose we could use

"I" or "He", but if we do that, we are going to save a tremendous amount of waste of the record.

Mr. Tilbury: That is my intent, Your Honor.

The Court: Yes.

Mr. Tilbury: If I could get to that point.

Q. (By Mr. Tilbury) Mr. Perkins, would you trace your own experience in the petroleum business for us, please.

A. Would I trace my own experience?

Q. Yes, sir. What experience have you had personally?

A. Well, I have varied experiences in the petroleum business. I entered the petroleum business in 1928. I have been in it continuously since then as a retailer, a service station [127] operator and owner, as a distributor, and as a jobber.

Q. Could you tell us a little more specifically what you have done, starting back in 1928? A. What I have done?

Q. Yes. A. Well, I started in the petroleum business in 1928. The first thing I did was bought a service station. Then I bought a second service station. Then a few weeks afterwards—or a few months afterwards, I made a contract with a company to act as their distributor, and I distributed for that company, adding service stations by lease and by building—

Q. I think you had better identify that company for us, please. A. That company, in the beginning, was called the Sunset Oil Company. It was a—it was connected with Tidewater Associated. My first contract was with the Associated Oil Company. My contract was for Southwest Washington, and I was with them until 1945. In the State of Oregon, I operated the same operation, except I was not connected with the Sunset in the State of Oregon. I was distributor and operated retail stations, built stations, bought them, some on my own and some for the Gilmore Oil Company.

Q. Until what time, sir? A. Until 1945.

[128] Q. All right. Now, by the beginning of the war, in 1941, what sort of operation did you have, in a general

way without detailing all of the specifics? A. Well, I had a rather large operation up until the war came. After the war came on, our supplies were curtailed—very greatly curtailed, and because of the war effort, we didn't get as much gas as we wanted by far. Then in the fall of '44 or the spring of '45, I forget just which it was, the Standard Oil of New York purchased the Gilmore Oil Company, and that ended my contract with the Gilmore. The Standard Oil of New York wanted to take it over on another basis, which I thought maybe that I would do. Now, my contract with the Sunset continued right on; that is, I was without a contract. As a matter of fact, I don't know whether—as far as I can remember, I only made one contract with them, with either of the two companies. Our dealings were very satisfactory. I have no complaints.

Q. Well, I think maybe we are getting a little far afield. Now, with respect to Gilmore or Sunset, were you without supplies for any period of time? A. I was never without supplies. My supplies were curtailed during the war; that is, they were curtailed during the war as far as my stations were concerned. They gave me a considerable quantity of gasoline, which I handled for them. That went to Government agencies or to contractors who were [129] contracting for the Government, but they didn't give me a sufficient amount to sell through my regular channels.

Q. Now, after Gilmore was taken over by Standard Oil of New York, did you deal with Standard Oil of New York in any way? A. I never dealt with them any more after they had taken them over, except a very short time—well, yes, I dealt with them, I think, for about six or eight months afterwards.

Q. Standard Oil of New York, is that also called Mobile Oil Company? A. That's the Mobile, yes, sir.

Q. All right. Now, how did it come about that you entered into a contractual relationship with Standard, if you did? A. Well, I had been toying with the idea of having my own brand of gasoline, selling under my own brand, and



with an idea of building a terminal in Vancouver. I contacted a man by the name of Mr. Harris, who was also in the same business that I was in the City of Portland.

Q. What is his first name, please? A. His name is Robert.

Q. Is he now deceased? A. He is now deceased. Bob and I decided between us that we would build a terminal.

Mr. Hilliard: Your Honor, I will object to any statements or position attributed to a Mr. Bob Harris, who is now [130] deceased and who would not be subject to be available for examination.

The Court: This is just all in the nature of general background and experience—

Mr. Tilbury: Yes, sir, it is.

The Court: —of the witness. I will leave it in the record for that purpose only.

Q. (By Mr. Tilbury) Mr. Perkins, I might add that don't relate any conversation—that is Mr. Harris' part of any conversation that you might have had. You realize that would be hearsay. Just what you did and what actually happened, and not something that somebody else might have told you. A. Well, we had decided to build a terminal. And I did the preliminary work, all of the preliminary work, which would take a few months. Another party, we agreed to take them in also on the deal.

Q. Who was the other party? I think we had better—  
A. The party was Wallace Truax.

Q. How far did you get with your plans on the terminal?  
A. Well, we got far enough along that I had got permission from the Planning Commission. I got the permits, or got them agreed to anyway, to take an option on the properties, and I had made several trips around the country lining up tanks, storage tanks, and also making connections for supplies.

[131] Q. (By Mr. Tilbury) Now, did Mr. Harris have an independent oil company from yours? A. He did, in Portland.

Q. Have you ever operated your companies together in any sense? A. No, we never did.

Q. Under what names did he market his products? A. I believe under the name of the Harris Oil Company.

Q. What were his stations called? A. I believe they were called Veltex.

Q. What names were used on your stations? A. Up until that time my names were Gilmore in Oregon and Sunset in Washington.

Q. Did you get that far as to plan a location for the terminal? A. Yes, sir, the terminal was to be built at Vancouver, close to Terminal No. 2.

Q. Did you receive permits from the City of Vancouver to build it there? A. I got agreements from them, yes.

Q. All right, and had you arranged for a source of supply in any way? A. We hadn't definitely agreed with anyone to buy, but I had contacted three or four companies who agreed to sell us.

Q. Which companies had agreed to sell you? [132] A. Well—

Mr. Hilliard: (Interposing) Your Honor, I object to the relevancy of any of this line of questioning. We are talking about a '53 contract, a '56 contract, and the period '55 to '57. It seems to me this is not related in any way or couldn't conceivably have any bearing on it. He has hearsay agreements with other companies he is buying—

The Court: I may have missed the full import of the question.

(Whereupon the reporter read the previous question.)

Mr. Tilbury: I was merely attempting to develop the general background. I don't plan to spend a great deal of time with it.

The Court: Yes, I am convinced for the witness to give the jury the benefit of his full statement concerning his background and experience in the petroleum field, and with that in mind he may continue. We are not dealing with any of the contracts between the parties as such, but only

to show his connection with the industry of petroleum products.

Q. (By Mr. Tilbury) Mr. Perkins, just briefly, how did it come about that you had some sort of dealings with the Standard Oil Company initially? A. Well—

[133] Q. Standard Oil of California, I should say. A. It came about just like this: They came to my office one morning—

• Mr. Hilliard: (Interposing) Your Honor, I object to this type of thing; the fact he entered into a contract with Standard and the fact that somebody came to his office or not, I don't see how that could be material to this case.

The Court: The objection will be overruled.

The Witness. They came to my office one morning.

Mr. Hilliard: May I have the occasion, who came to his office?

The Witness: I will tell you. Mr. Robert Harris, Mr. Lee Powell, and Mr. Hallstead of the Standard Oil Company. They came to my office and asked me if I would like to make a contract with the Standard Oil Company.

• • • • •  
[136] Q. All right, sir.

Will you identify for us who Mr. Hallstead was and what

[137] his position was with the Standard Oil of California.

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The Witness: Mr. Hallstead told me that he was the Assistant General Manager of the Standard Oil Company of the Portland area district.

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Q. (By Mr. Tilbury) All right now, Mr. Hallstead and Mr. Lee Powell, you said, I believe, and Mr. Robert Harris came to your office? A. Yes, sir.

Q. Correct? A. Yes.

Q. For what purpose? A. Mr. Hallstead asked me if I would like to make a deal with the Standard Oil Company to buy gasoline.

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[138] Q. (By Mr. Tilbury) Do you know of your own knowledge whether Mr. Hallstead had a position of some sort with the Standard Oil of California? A. Yes, I do. I had met him before several times.

Q. Had you had occasion to deal with him on other occasions? A. Many times.

Q. All right. Now, you say the Regional Office, was that his position? A. Assistant, I believe they call them, Assistant General Sales Manager; I believe that is the official title.

Q. Are you speaking of the Portland area? A. Of the Portland area.

Q. And that is for the Standard Oil Company? A. That is the Standard Oil of California.

Q. Can you define what is meant by the Portland area, in a general way? A. The Portland area is all of Oregon and Southwest Washington.

Q. The entire State of Oregon? A. No, I don't believe so. I believe the eastern part of Washington comes under the Spokane territory.

. . . . .

[139] Q. (By Mr. Tilbury) What did you do, Mr. Perkins? A. The result of that meeting, I went to San Francisco.

Q. To which office? [140] A. To the Standard Oil Company of California's office.

Q. All right. Were you accompanied by anyone at that time? A. Yes, sir, I was accompanied by Mr. Harris and Mr. Powell and their two wives.

Q. And who did you meet at the Standard Oil Office, if anyone? A. The first one I met, I can't recall his name—they met us at the ferry and took us to the hotel and picked us up the next morning and brought us to the Standard Oil office, and I think the first person that I met there, I believe, was Mr. McClanahan, just for a minute.

Q. Could you identify him? A. Mr. McClanahan was the General Sales Manager; General Sales Manager at that time.



Q. That is in 1945? A. Yes.

Q. Later did he become something more than the General Sales Manager? A. Later he became the Executive Vice President or the Vice President in charge of all Western operations.

Q. Very well. Now, just to sort of skip over a few details, I take it that at that time, if you don't mind, perhaps I could save a little time—was a contract entered into between you and the Standard Oil Company? [141]

A. Yes, there was.

Q. And this was following some negotiations, I take it? A. About two weeks of negotiations.

Q. And that contract was prepared in your name, I take it, and in the names of others? A. It was prepared in my name and Mr. Harris' name and in Mr. Powell's name.

Q. Who signed it? Did Standard Oil Company sign the same contract? A. Yes, sir.

Q. Did the three of you sign individually? A. No, sir. We all signed the same paper.

Q. That is what I mean. In 1945 did you sign as Clyde A. Perkins or did you sign in some other capacity? A. No. I signed my own name individually.

Q. Mr. Perkins, did you use some assumed name in connection with your activities at that time? A. I have always used the name of the Perkins Oil Company.

[142] Q. (By Mr. Tilbury) Has that been true since 1928? A. Yes.

Q. You sold the product under different names, but you used them in your own business, is that true? A. Yes.

Q. All right. Now, were you operating as an individual proprietor, that is, a single man operation at that time? A. Yes, sir.

Q. Was your son, Allen, assisting you? A. Yes.

Q. In operating at all? A. Well, he was working in the company for me. He had just got out of school, and he was working for me.

Q. In 1945, was he simply an employee? A. Yes.



Q. Did he receive a salary like other employees? A. Yes.

Q. And did you have Maxine Ross working for you individually? A. Yes.

Q. Now, Mr. Perkins, have there been more than one contract signed between you and the Standard Oil Company? A. Yes.

Q. On what other times or in a general way were these contracts signed? A. The first one, 1945, the next one '53, the next one in [143] 1956.

Q. Now, were these contracts signed under individual names? A. All in my name.

Q. Have there been any contracts signed on behalf of the corporation by you with the Standard Oil Company? A. Never to my knowledge.

Q. Have all dealings been between yourself and the Standard Oil Company from 1945 until the time you terminated the relationship with them? A. Yes, sir.

Q. How about products that were drawn and in whose name were they charged to the Standard Oil? A. They was charged to Clyde Perkins.

Q. Have there been any illustrations or any times in these years that you can think of where the products were billed to anyone other than yourself individually? A. No, sir.

Q. Now, with respect to products that were drawn by Mr. Harris and Mr. Powell, were these charged to anyone? A. They was charged to Perkins for Harris. Well, I don't know which is first just now, but I will say Harris, Powell and Perkins.

Q. Well when you say, "by Perkins" will you define that? A. That is myself, individually.

Q. Individually. Were they ever charged to a corporation? [144] A. No, sir.

Q. Now, did you at any time following 1945, did you create a partnership of any sort? A. Yes, I did. That is not a partnership, but I created after 1945 a basis of payment for son is all.

Q. Then what sort of basis for payment? A. A portion of the profits.

Q. Would you explain what you mean by that? A. Well, instead of paying him a salary, I let him have a drawing account, and he was to share in the profits of the organization, of the company.

Q. Did this remain true of them until 1953? A. Up until 1952, yes.

Q. Did he have a voice in the management? A. Well, I had all the final decisions, all the final decisions. He—of course, we talked things over just as I would with any employee. Maybe I talked it over with him more than I did the others, but the final decision on everything rested on me.

Q. How long has your son worked together with you in one capacity or another in the petroleum business? A. Well, since he got out of school, and I believe that was, well, in the middle thirties.

Q. Now, was there at any time a corporation or corporations formed? [145] A. Yes, there was.

Q. What time? A. 1952.

Q. I see. Would you tell us what names were used by those, by the corporations? A. We just kept the same names, Perkins Oil of Oregon and Perkins Oil of Washington.

Q. Have you been using those names prior to that time? A. Yes, sir, we had been using them for many years.

Q. When did you start using them? A. When we first started business.

Q. And did you separate it by Oregon and Washington? A. Well, we kept them all in one set of books until I believe about—it seems to me like somewhere around 1947, and the tax business between the two states got complicated. One had the sales tax and the other didn't. So, we then set up two sets of books called Perkins Oil of Oregon and Perkins Oil of Washington.

Q. Was the business divided on a strictly geographic basis? A. Yes.

Q. In other words, the Oregon business was done in the Perkins Oil of Oregon books and the Washington on the Washington books? A. Yes, sir.

Q. Now, as a result of the formation of the corporations, [146] was the named changed in any way other than the addition of the word "corporation"? A. No, not that I know of.

Q. All right. Now, did you have any discussion with Standard Oil people; and, if so, tell me which people with respect to the formation of the corporation? A. Yes, I did.

Q. Which officer? A. With Mr. A. P. Johnsen, the President of the S. O. Company.

Q. Would you identify for us the S. O. Company? A. The S. O. Company was the jobber division of the Standard Oil Company of California.

Q. Now, maybe you had better define so we will have a picture of what the jobber is? A. Well, a jobber is—I will give my definition of it. A jobber is one that buys merchandise from another company and resells it under his own brand to distributors or to service stations or to commercial accounts.

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[148] Q. All right. Now, you mentioned you had conversation with Mr. A. P. Johnsen I believe in 1952 with respect to the corporation? A. Yes, sir.

Q. And Mr. Johnsen is also known as August P. Johnsen? A. That's right.

Q. He was head of the S. O. Corporation? A. Yes, sir.

Q. And was he the highest man in the organization having charge of rebrand jobbers?

Mr. Hilliard: I object, Your Honor. This witness doesn't know the internal workings of the Standard Oil Company. He has never been shown to have been an employee or officer of the company.

The Court: May I have the question?

(Whereupon the Reporter read the pending question.)

The Court: The objection will be sustained.

Q. (By Mr. Tilbury) All right, Mr. Perkins, just tell us now, if you will, what you told Mr. Johnsen at that time, your approach to what happened, what you told him?

Mr. Hilliard: I object. This is apparently directed to the formation of two corporations, Perkins Oil Company of Oregon and Washington; and what Mr. Perkins said or did not say about the corporations would be irrelevant and immaterial [149] and incompetent. It is truly a self-serving statement, Your Honor.

The Court: You may answer.

The Witness: Shall I answer?

The Court: Yes, you may.

A. I told Mr. Johnsen that I would like to slack up; that I was getting to the time that I wanted to do less work; that I had my two boys with me; that I wanted to incorporate and let them buy out the business, the operating part of the business and eventually they would own it all. [150]

A. (Continuing) We discussed it at quite a length at one time. He told me he could see no—

Mr. Hilliard: Excuse me, Your Honor. I would object to any statements being attributed to Mr. Johnsen. He is not shown to have been authorized to make any statement that was impliably authorized by the company or that the company would have any voice. And whether or not Mr. Perkins incorporated or did not incorporate this business, this would in no way—any statement attributed to Mr. Johnsen would in no way be binding on this subject and could not be within the scope of any employment as shown by the record.

Mr. Tilbury: Your Honor, may I say for the record that I think Mr. Johnsen, as I understand it, would be probably the only one who could bind the company. He was—

The Court: Well, without further comment, the objection will be overruled.

Q. (By Mr. Tilbury) First, I believe you have identified the two boys you had reference to. A. My son Allen and my nephew Marvin Lennington. I always called him one of my boys, because he has been with us a good share of his life.

Q. When did he first come into contact with you? A. He first came over here in this part of the business in the late forties. He came over from Yakima.

Q. What had he been doing there? [151] A. In the transportation business.

Q. Now, at the time of the conversation that you started to relate to us, had the corporations been formed at that time? Were they in existence? A. When I talked to Mr. Johnsen?

Q. Yes. A. No, they were not.

Q. All right. Now, Mr. Perkins, would you pick up where you left off with relation to that conversation?

Mr. Hilliard: I object, Your Honor, for the same grounds, and in addition, there has been no specification of the time and place of the conversation.

The Court: We might as well fill that in now. Fill in the time and place.

Mr. Tilbury: Yes, sir.

Q. (By Mr. Tilbury) Would you fix the time and place for us? A. The time and place was that Mr. Johnsen came to my office one time, and I told him there. Of course, he knew Allen, and I called in Marvin and introduced him to Marvin—that's Marvin Lennington—and we discussed it then quite at some length, and that was in—in the year 1952.

Q. Can you identify the time of year for us, Mr. Perkins? A. Well, it was in—I'd say it was in the late fall of '52. In the fall of '52.

[152] Q. Can you be certain that this was before the corporations were organized? A. Oh, yes, definitely it was.

Q. All right. Now, would you relate the conversation? A. Well, I can't relate all the conversation, but we dis-



cussed it and I told him what I wanted to do and how—and what the ultimate thing that I wanted to arrive at, and I told him that I would have to—wanted to assign the contract to the corporation so I could—so the boys could eventually own the business and I could retire.

Q. Was this agreeable with Mr. Johnsen?

Mr. Hilliard: I object, Your Honor, on the same grounds.

The Court: Yes. The objection to the form of the question will be sustained.

Q. (By Mr. Tilbury) What was the outcome of the meeting, Mr. Perkins? A. Well, the meeting was very amicable, and I was given to understand that as far as—that that was all right, to go ahead and incorporate.

Mr. Hilliard: Your Honor, I object and move to strike his understanding, because it is not binding on the defendant.

The Court: Yes, it is merely the witness' conclusion of what the other party may have considered about the matter. It will be stricken from the record, members of the jury. [153] Disregard it.

Mr. Tilbury: All right. I don't mean to ask anything that Your Honor has already ruled on. I don't believe you have, but I will withdraw it if it is.

Q. (By Mr. Tilbury) Mr. Perkins, what did Mr. Johnsen say at that meeting— A. He—

Q. —in response to your statement?

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The Witness: He said he could see no reason why that couldn't be brought about.

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Q. (By Mr. Tilbury) Now, were corporations organized sometime after that— A. The two organizations were then organized.

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[154] Q. (By Mr. Tilbury) Mr. Perkins, who organized the corporations? Who did the physical work? Who did the actual physical work in getting the corporations organized? A. Mr. Snider, my attorney, and myself.

Q. Would you identify Mr. Snider for us, please. A. Mr. Snider, Claude C. Snider, is an attorney in Vancouver.

Q. Has he represented you for some time? A. A number of years, yes.

Q. Now, did he organize one or two corporations? A. We made two corporations, one for Oregon and one for Washington.

Q. All right. Now was stock prepared in some way, stock certificates prepared by Mr. Snider? A. Yes, sir.

Q. Did you have some kind of meeting with Mr. Snider? A. Yes, sir.

Q. Will you describe what happened at the meeting? Don't relate, please, comments that Mr. Snider or Allen or Mr. Lennington made. Just tell us what happened at that meeting. A. Well, we had—of course, I had several meetings leading up to the conclusion of the corporation. At this particular meeting, I assume this is the one you are thinking about—

Mr. Hilliard: May we have the time and place of this meeting, Your Honor?

The Court: If you will supply it, please.

[155] The Witness: The time was in the late fall of '52, in Mr. Snider's office, Mr. Allen Perkins and Mr. Lennington and Mr. Snider and I were in the office. Mr. Snider handed me the stock, and we signed the stock. We signed all the papers there.

Q. Now, by "we", we had better identify who— A. The three boys—the two boys and I signed myself. Mr. Lennington and Allen and myself, we signed the papers. We made a contract between ourselves what they was to do in order to acquire the ownership of the company.

Mr. Hilliard: Your Honor—

The Witness: And they pledged—they endorsed the

stock over to me and pledged the stock to me, and then signed a resignation as an officer of the company.

Q. (By Mr. Tilbury) Now, would you explain why this resignation came about? A. It came about in this way: That the contract—

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The Witness: Well, these papers were all—were all [156] completed on the advice of counsel, advice of our attorney. He did it all for us. And the reason the boys signed the contracts—resigned as officers was that the contract provided that if they failed to make the payments as agreed, that I could take back—take over all the corporation—

Mr. Hilliard: I object—

The Witness: —without any—without—

The Court: Do we have those documents? If we have them identified, they speak for themselves.

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[172] Q. (By Mr. Tilbury) Mr. Perkins, at the time the corporations were organized in 1952, did you transfer any of your personal real estate to them as distinguished from leases? A. I transferred no real estate to the corporations.

[173] Mr. Hilliard: Your Honor, I object to the use of the term “transfer” as having no significance. He says he didn’t transfer, and yet he says he leased. Now, I think a lease would be a transfer.

The Court: Yes, there might be an understanding in that area. Develop what he has in mind.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Mr. Perkins, you did lease some of your property to the corporations? A. Yes.

Q. Now, generally, can you tell us what property you leased? A. Well, I can’t tell you offhand what properties. I leased to the corporations several service stations.

Q. How about bulk plants? A. And bulk plants.

Q. Were there some that you did not lease to them? A. Yes, there was some that I did not lease.

Q. Why was there a distinction? A. I don't believe I can answer just why there was some that I didn't—there was some that I didn't lease. There was a bulk plant in Centralia that I leased, but the service station next to it I didn't because I had a long time lease with the operator there and I just let it run on. And then on another piece of property in Vancouver, they only leased [174] just a small portion of it, and I retained the other half—the other two-thirds. And in Washougal, they only leased the service station part, and I retained the other part. There was various reasons for it.

Q. How about Astoria?

Mr. Hilliard: Your Honor, for point of clarification, the witness has used the term "they leased". I assume he is still talking about the Perkins Oil Company of Washington?

The Court: I assume so.

Mr. Hilliard: May I ask him if that is right?

Q. (By Mr. Tilbury) Go ahead, Mr. Perkins. A. When I speak in Washington, I'm talking about the Perkins Oil Company of Washington. When I spoke of stations in Oregon, I'm speaking of Perkins Oil Company of Oregon.

Q. How about the station at Astoria, was that transferred to the corporation, or corporations as the case may be? A. I don't think that was ever either transferred or leased to the corporation—

Q. Mr. Perkins— A. —during this period anyway.

Q. Pardon me. Would you define for us what is meant by the term "bulk plant"? How does that differ from any other installation? A. Well, there is three methods of handling gasoline. Gasoline first comes into this Northwest—I am speaking of [175] this Northwest—comes in by boat into a large marine terminal. That's the only way it can come in. There is no other method provided at this time. Then it is hauled out of that marine plant by truck

and trailer or semi-trailer—I suppose it could be taken out by barge—and to an intermediate plant, which is in the territory which the gasoline will be distributed from. For instance, we have—say we have a bulk plant in The Dalles, we would haul gasoline from the marine terminal to our bulk plant in The Dalles or in Hood River, and then it would be redistributed from there in small equipment.

Q. By that you mean a small truck? A small truck by “small equipment”, is that what you meant? A. Yes, a small truck. About a thousand gallon truck.

Q. And in the case of equipment that went to a marine terminal to your bulk plants, that would be on over-the-road heavy type equipment? A. Yes.

Q. Now Mr. Perkins, you mentioned the Marine Terminals. Does it come in on pipelines too occasionally? A. Not into this area. There is no pipeline here bringing gasoline into the Northwest area outside of Pasco.

. . . . .  
[176] Q. (By Mr. Tilbury) Now, does it occasionally move in by truck in an area, that is, up from California or wherever it might come? A. No gasoline can move into this area by truck with the exception of Medford area. Medford area can be hauled by truck from the Bay area. It would be about half way between the Bay and Portland.

Q. Why is it that it cannot move above Medford?

Mr. Hilliard: Your Honor, may we have a time designation? It seems as though the witness is speaking of the present—

The Court: Yes. I don't know if we are talking about the claim period or presently.

Q. (By Mr. Tilbury) All right. Mr. Perkins, would you tell us, during the claim period, that is '55 through '58, did products move by truck any further north than Medford? A. Well, the Medford area. Never anything further north than the Medford area.



Q. And why is that? What is the reason? [177] A. Well, it would be impossible to move it on account of the freight rates.

Q. All right. It is not a physical limitation; it is an economical one? A. It would be an economical loss to do it.

Q. I see. The cheapest way then to do it is to move it by barge or something of this kind or tanker? A. Tanker, and then into the marine terminal.

Q. All right.

Q. (By Mr. Tilbury) With respect to the marine terminals in Oregon, where are these marine terminals? A. The marine terminals in Oregon are down on the Linnton Road at Linnton and Willbridge and along in there.

Q. This is North Portland— A. In the north—let me get my directions here. I'd say northwest part of Portland.

Q. Are there any on the Coast, the Oregon Coast? A. There is a marine terminal also now at Vancouver, Washington. There is a marine terminal in the Astoria, and there is a marine terminal at Crescent City, and a small marine terminal at Coos Bay, and a small marine terminal at Hoquiam [178] Washington. Several in the Seattle area. That's in the area that I do business in.

Q. All right. One in Anacortes, but that is further north; is that true? A. There is one in Anacortes.

Q. All right. I stand corrected. Now, who owns these marine terminals? A. The marine terminals at Linnton and in the Portland area, Standard Oil has one, the Mobile, that's the Standard of New York, has one, Texas Oil Company has one, the Union has one, Richfield has one, the Shell has one. Unless I missed one, that's all. I might have overlooked one. They are all owned by the major oil companies—let's put it that way—except the one directly across the river from Linnton is owned by Time Oil Company.

[179] Q. (By Mr. Tilbury) Mr. Perkins, would you define the term "major" for us. What do you mean by major as distinguished from minor? [180] A. Well, that is easy to define. A major oil company is a large national oil company that does national advertising or semination, that has national brands, and the ones that I referred to here are all majors, with the exception of the Time. The independent oil company in this area is an oil company that buys from a major and either rebrands or used the major brand.

Q. In other words, an independent, as far as the area we are talking about, would acquire its products from a major? A. Here in this territory.

Q. Would Time be an exception to that? A. Time has a small refinery up in Tacoma. I think they can only make one brand of gasoline, one grade, and I assume, well, I assume—I don't know. They would have to get their gasoline from somebody.

Q. Well, you better not guess.

Now, Mr. Perkins, as far as refineries are concerned, is the Time refinery, is it the only independent refinery, or are there others in the area? A. There are others, there is a large refinery at Anacortes by the Shell, and a large one at Anacortes by the Texaco. There is a large one at Ferndale owned by or operated, makes Mobil gasoline.

Q. Are there any independents that have refineries with the exception of this one at Tacoma owned by Time? [181] A. That is right, no independents.

Q. Is the one owned by Time in Tacoma, is it a small one or a large one? A. A small one.

Q. Now, if I might go back to one question I asked earlier or touched upon, with respect to real estate, going back at the time that the corporations were organized; did you physically deed any of your real estate over to the corporations? A. I never did deed any real estate to the corporation.

Q. Now, would this also be true right up to the present time? A. It is true right up to this minute.

Q. Have the corporations owned any real estate, to your knowledge? A. Never to my knowledge.

Q. Was the extent of their ownership interest, not ownership, I should say the extent of their interest confined to that of a lessee, that is someone who leases products or stations, I should say? A. Yes, sir.

Q. Now, following the formation of these two corporations in 1952, did you communicate this fact to the Standard Oil Company in any way? A. After they were formed I did.

[182] How did you communicate to them? A. I went to San Francisco and told them what I had done and asked to have the contract assigned to the corporations.

Q. When did you make such a trip? A. That was in the late winter of '53. No, pardon me. that was in the early winter of '53, the first part of the year of '53.

Q. Was it a fairly short time after the corporations were organized? A. Yes, as quick as I could go south, I was there.

Q. Whom at the Standard office did you call? A. I first went in and talked to Mr. Johnsen about it.

Q. That is again Mr. August Johnsen? A. Mr. August Johnsen.

Q. Did you talk to anyone else? A. Yes, I did. I talked to Mr. Cuyler.

Q. Who was Mr. Cuyler? A. Mr. Cuyler was the General Sales Manager.

Q. For which company? A. For the Standard Oil Company of California.

Q. In other words, the defendant in this case? A. That is right.

Q. One of the defendants? A. Yes.

Q. Did you advise either of these gentlemen of the fact [183] that a corporation or corporations had been formed?

Mr. Hilliard: I would object to any further testimony on this subject on the ground and for the reason it is irrelevant and immaterial, incompetent, the evidence as

testified to by plaintiff shows that he remained on the contracts, he signed the contracts. What he did or did not do in connection with the corporations in no way have probative value in this case.

The Court: It will be overruled.

The Witness: Oh, yes, I did. That is one of my reasons for going there.

Q. (By Mr. Tilbury) All right. What was said by either Mr. Johnsen or Mr. Cuyler?

[184] The Witness: I told Mr. Johnson that I went ahead and completed my corporations now and I was ready to assign the contract and he said, "I don't know," he said, "I have talked that over with some of them and I don't know whether it can be assigned or not." And I said, "Well, I am terribly disappointed if it has not, I have went to a lot of trouble and [185] after our conversations in my office, you told me that it would be done." He said, "Well, we will go up and talk to Mr. Cuyler." We went upstairs and talked to Mr. Cuyler and Mr. Cuyler said, "You will have to get ruling from higher up," and I said, "How high up?" He said, "Well, you will have to get it from Mr. McClanahan." They discouraged me from going up to Mr. McClanahan, but I went up there anyway, and, when I got there, he was either out of the city or I couldn't see him. I was around there two or three days and I was unable to make any progress and Mr. Johnsen told me that I was just wasting my time, that they were not going to assign the contract.

[188] Q. (By Mr. Tilbury) All right, Mr. Perkins, did the contract come up for renegotiation sometime after the formation of the corporation? A. Yes, sir.

[189] Q. Approximately when did this take place with reference to the formation of the corporation; in other

words, when did— A. The corporation was formed in 1952, and the contract came up for renegotiation in the spring of 1953.

Q. All right. And where did the discussions take place which led to the signing of the 1953 agreement? A. Where did they take place for negotiations?

Q. Yes, sir. A. In Mr. Johnsen's office in San Francisco in the Standard Oil Building.

Q. Who participated in those discussions? A. Well, Mr. Johnsen led the discussions. Most of the discussions was with him. There might have been some other people came in the office at different times, but most of the discussions in the 1953 contract were with Mr. Johnsen.

Q. Were you present at those discussions? A. I certainly was.

Q. Was Allen, your son, present at that time? A. Allen was present at all of them that I know of except one.

Q. Did Mr. Lennington participate in any of the discussions leading up to any of these contracts?

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[190] A. Mr. Lennington was in charge of our transportation.

Q. Did he concern himself with the contract negotiations? A. No.

Q. Did he deal with customers, as such, customers of your business? A. Well, not too much. That was his obligation to deal with the customers.

Q. I figured he did on occasions? A. Oh, yes, he would on occasions. Oh, yes, he would on occasions. He would go call on customers.

Q. What generally did Allen Perkins, your son, do? A. My son handled the sales.

Q. The sales as far as the dealings between, that is the sales of the products that you obtained from Standard out to customers, is that it? A. That's right.

Q. And generally what did you do? A. Well, I was—I was the General Manager of the business. I was re-



sponsible for the entire operation. I managed the office. I directed the different ones, different employees. I handled all the credits, the finances.

[191] Mr. MacLaury: Would you clarify? Are you speaking about 1953?

The Witness: I am speaking of all this. Always. And anything else there was to do, I was, I was there all the time working, managing the business.

Q. (By Mr. Tilbury) Would you tell me in what respect your activities changed following the formation of the corporations as far as your day-to-day activities were concerned or any other activities? A. Well, there was no change at all except I just worked harder, that was all.

Q. All right. To what extent did the activities of Allen Perkins change? A. None that I knew of. There was no change in anything that I know of.

Q. Did the activities of Marvin Lennington change? A. No.

Q. Was there anything about the office that varied from the way it had been conducted prior to the corporations? A. Nothing that I know of.

Q. Now, with respect to the corporations, either of the corporations, did you have formal meetings of the Board of Directors? A. Well, I don't believe we did, Mr. Tilbury. I come back pretty well licked, and I don't believe you had any formal [192] meetings with the Board of Directors or with the stockholders. We had meetings occasionally. The three of us would go over to the restaurant and have a cup of coffee and talk things over; and occasionally if something come up that our attorney thought we ought to put in the minute book, why, we decided on something and put it in the minute book. That is just the way we operated. It was a family operation and we looked on it as a family operation. As far as I was concerned, there was never any change in the business. It went on just the same as it did from the day it started, and I don't believe that we ever had any Board, any formal Board of Directors meetings.

We would have three, the three of us would sit down and talk about something, which we did many times, of course.

[210] (By Mr. Tilbury) All right. Mr. Perkins, following—and I won't repeat what was said yesterday—the discussions that you had prior to the 1953 agreement, did you have or did you mention to the Standard officials at any time this matter of corporations thereafter?

Mr. Hilliard: Your Honor, this was covered yesterday again, and again we have to go through the same record of objections. He said, "Later in 1953, he mentioned it again", and then he moved on to another subject matter.

Mr. Tilbury: Well, that is not bringing it up to date.

The Court: It will be overruled. You may inquire.

Q. (By Mr. Tilbury) Go ahead, Mr. Perkins. A. Yes, we had different discussions about it.

Q. Would you identify places and times and individuals for us? A. Well, I discussed it two or three different times with Mr. Johnsen in Standard Oil's office.

Q. Which Mr. Johnsen? A. Mr. A. P. Johnsen, the President of the S. O. Company.

[211] Q. (By Mr. Tilbury) Well, can you tell us any specific times you might have discussed it with Mr. Johnsen other than those that you might have related to us yesterday? A. Well, one particular time, that is at the time that we were discussing the 1953 contract, I made a special request then to get the contract made in the name of the corporation, which they refused to do.

Q. (By Mr. Tilbury) If you can identify the specific time and place, Mr. Perkins, please do so. A. Well, I couldn't identify the hours or the day, but it was just prior—it was during the time of the negotiation on the 1953 contract. And I believe, if I'm not mistaken, that that negotiation took place in the month of March, 1953.

Q. All right. And this was a discussion with Mr. Johnsen? A. Yes, sir.

Q. All right, sir. Now, did you mention the subject of the corporations at a subsequent time to that? [212] A. Yes, I did later on after they had accepted—to pinpoint the time, it was after they had accepted the assignment of the corporation—assignment of the Robert Harris interest to the corporation.

Mr. Hilliard: I object and move to strike that, Your Honor. The witness is not competent to testify to what Standard accepted from some other—

The Court: I didn't get the whole conclusion. May I have it?

(Whereupon the Reporter read back the last pending answer.)

The Court: That is just fixing a period of time. It will stay in the record.

Q. (By Mr. Tilbury) With whom did you discuss it? A. I discussed that with Mr. Johnsen.

Q. What did Mr. Johnsen say, if you recall?

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The Witness: Well, I asked him why they would accept theirs and not mine, and I was interested in it because I was the guarantee on the contract—the guarantor on the contract. And he said, "Well, Bobby is dead and we decided [213] it would be best for us to just take their corporation." And I asked them why they wouldn't take ours, and he says, "Well, we don't want to deal with the corporation. We want to deal with you personally."

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[230] Q. (By Mr. Tilbury) Mr. Perkins, in 1957, did you make [231] some effort to dispose of your business, your end of your business? A. In '57?

Q. Yes, sir. A. I did.

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Q. (By Mr. Tilbury) Did you notify Standard of your desire? A. Yes, sir.

Q. How did you notify them? A. I notified them in person.

Q. Did you receive any kind of written response from them with regard to— A. Not—not a written response, but I remember it at this time.

Mr. Tilbury: All right. Could the witness by shown [232] Exhibit 232, please.

Q. (By Mr. Tilbury) While he is looking for that, did any of the Standard people who you know to be connected with Standard come to this area to examine your business? A. Yes, sir.

Q. Do you recall who they were? A. Mr. Godfrey of the Signal Oil Company.

Q. Now, what is his first name, please? A. Darwin Godfrey.

Q. And what is his capacity, if you know, or was his capacity? A. President and General Manager of the Signal Oil Company.

Q. Now, sir, would you identify the Signal Oil Company for us? A. The Signal Oil Company is a wholly owned division of the Standard Oil.

Q. All right. Now, there is a Signal Oil & Gas Company too, I believe, that has been mentioned. Is that a different company than Signal Oil Company? A. Entirely different.

Q. Is it owned by the Standard Oil Company, to your knowledge? A. Not to my knowledge.

Q. All right. Now, is Mr. Godfrey still with the Standard Oil Company, if you know? A. I only know from hearsay.

[233] Q. All right, you had better not say. At that time though he was President of the Signal Oil Company? A. Yes, sir.

Q. That was a division of Standard? A. Yes, sir.

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[234] Q. (By Mr. Tilbury) Mr. Perkins, do you recognize Exhibit 232? A. Yes, I do.

Q. Do you recall receiving this letter? A. Yes, sir, I received this letter.

Q. All right. Is this letter written by Mr. Godfrey, apparently? A. Wrote and signed by Mr. D. F. Godfrey.

Mr. Tilbury: All right. We would offer in evidence at this time Exhibit 232.

The Court: Any objection?

Mr. Hilliard: No, Your Honor.

The Court: It will be received and the original will be substituted.

Mr. Tilbury: Yes, sir, fine.

(Whereupon Plaintiff's Exhibit No. 232, Letter dated June 4, 1957 to Perkins from D. F. Godfrey, Signal Oil Company, was received in evidence.)

[235] Q. (By Mr. Tilbury) Mr. Perkins, to whom is this letter addressed? A. Clyde A. Perkins.

Q. Does the name Perkins Oil Company appear there? A. Yes, sir, Perkins Oil Company.

Q. All right. How is it identified? A. Clyde A. Perkins, Perkins Oil Company, P. O. Box 59, Vancouver, Washington.

Q. All right. Does the word "incorporated" appear there anywhere? A. No, it does not.

Q. Perkins Oil Company is the name that you used before the corporations were created? A. I've used that since 1928.

Q. All right. Now, perhaps—could you read for us the contents of that letter? A. Do you want me to read the letter?

Q. Yes. I don't think it is very long. A. "Dear Mr. Perkins: Thank you very much for your letter dated May 29, transmitting a statement showing your sales in various general localities in the States of Washington and Oregon.

"The thing which would be most helpful to me at this time would be a list showing the actual locations of the dis-



tributor plants, and especially the retail outlets. It is [236] particularly important to us to estimate what volume we can anticipate under our brand and policies.

"If you will furnish the station locations, I assure you that our dealer sales manager will have the estimate made without contacting any of your people and without going on the properties. He will merely drive by and size up the station and the neighborhood in order to estimate the potential for us. Following that information, you and I can discuss the subject in more detail before any further steps are taken."

"Kindest personal regards. Sincerely, Dar, D. F. Godfrey."

Q. Now, did he come to this area following the receipt of that letter? A. Yes, sir, he did.

Q. What did he do specifically, I mean, without detailing everything? A. He discussed the entire situation with me with regard to our outlets and to our business.

Q. All right. Now, Mr. Perkins, if you will, would you trace for us from the beginning in 1945, and without giving us all the details, but trace in a general way the pattern of your purchases, individually I am speaking of, from the Standard Oil Company in 1945 through the end of your relationship with them in 1958. [237] A. The pattern of our purchases?

Q. Yes. That is, whether it went up or went down in a general way. A. Oh, up until 1955, our sales climbed continuously, or the fifty—to the middle of '54 they climbed continuously. From then on, they declined.

Q. (By Mr. Tilbury) Did anyone make purchases from Standard Oil Company with the exception of yourself individually? A. No one except myself.

Q. All right. Now, when you were speaking of purchases then, you would be referring to purchases that you made individually? A. That's right.

[238] Q. (By Mr. Tilbury) Mr. Perkins, you are familiar with these books, are you not, 221-A-1 and 222-F? A. Yes, sir.

Q. What sort of information is contained therein? A. These are invoices from the Standard Oil Company.

Q. All right, sir. Now, would these be typical of invoices—would these be typical invoices? Are they unusual in some fashion? Are these typical of the invoices that you received for products that you obtained from Standard over the years? A. Yes, sir.

Q. All right. Is there any other information there besides invoices? A. Well, there is a summary of the invoice—of the preceding invoices, and that's all I see in here just in glancing.

Q. Who prepared the invoices? A. I don't know who prepared them. I guess the Standard Oil. They mailed them to us.

Q. Would that be true of all the invoices in those books, as far as you know? A. Yes, sir.

Q. Are there some identifications on the front of the various documents? Let's take 221-A-1. [239] A. You would like me to read an invoice?

Q. No, I don't think we better do that as yet. I am asking if there is some identification on the front of it as far as locality or time. A. The locality and the date is on the invoice and where the merchandise was received. The name of the party it was billed to.

Q. Now, with respect to 221A1, what area would be included in it; can you tell part of the area? A. I believe this is the Aberdeen area; 221A1 is Aberdeen area, or Washington area.

Q. What period of time? Maybe you can look at the first one and the last one? A. I will. January the 5th, '56, until—no, January the 4th, '55, to January the 6th, '56.

Q. Now, this would be stations that you supplied around Aberdeen? A. These were stations we supplied around

Aberdeen and they are also some Olympia in here, I notice, going through.

Mr. Hilliard: Your Honor, I object to the classification as "we."

Mr. Tilbury: I didn't say "we." I said "you."

Mr. Hilliard: The witness said "we."

The Witness: I am sorry, I should have said "I."

Mr. Hilliard: I submit those invoices show the supply [240] was from the Perkins Oil Company of Washington to those customers, not by Mr. Perkins individually.

Q. (By Mr. Tillbury) Mr. Perkins, of the invoices that were received over the years from Standard Oil Company, to whom were they invoiced? Were they invoiced at any time to either of these two corporations, Perkins Oil of Washington or Perkins Oil of Oregon? A. They never was. Every invoice that was made was made to Perkins, Powell, and the Harrises organizations.

Q. All right. Besides the invoices, were you presented with any other bills by the Standard Oil or recapitulations or summaries of amounts owing? A. Well, there would be summaries of each bunch of invoices listed and the amounts owing.

Q. All right. And to whom were the summaries sent? A. Well, the summaries would be the same. They would be listed. To begin with, in the first part of our operation they were all mailed to the Kenton office and then divided there and our portion was sent to Vancouver. Later on—

Q. I think we better not use the word "our," so we will avoid this problem. A. Well, my invoices. Well, later on the invoices came direct to me.

Q. Would you explain for us where Kenton is and what took place there? [241] A. Kenton is in the Northeast part of Portland on Burrage Street.

Q. What sort of thing is there? A. What is there?

Q. Yes. A. That is the bulk plant of the Champion Oil Company.

Q. Now, what is Champion Oil Company? Is it a corporation? A. No, sir.

Q. What sort of thing is it? A. Champion Oil Company was merely a partnership or—I wouldn't say it was a partnership—it was a buying organization or a trade name that we used. A trade name.

Q. Was it a corporation? A. It was not a corporation.

Q. Did you and Mr. Powell and Mr. Harris have a partnership at any time? A. Never at any time.

Q. How did you operate your three respective businesses? A. Each of us operated entirely separate.

Q. All right. A. I believe that Powell and Harris had some connections; I believe they operated, had a few stations that they were in together on, and possibly they were in together on their transportation end of it.

Q. In the beginning did you use the Kenton plant? [242] A. I attempted, to start with, to use the Kenton plant.

Q. What happened? Why didn't you continue to use it? A. I found it was impossible due to the tax situation in the State of Washington.

Q. Then what did you do? A. I immediately called the Standard Oil Company on the telephone and told them about it.

Q. What happened? A. Mr. Hargens came from California—

Q. Well, I think you need not relate his conversation but just what happened as far as you personally were concerned? A. The result of it was that I would draw no more merchandise for the State of Washington out of the Kenton plant and I would only use the Kenton plant for just an emergency delivery.

Mr. Hilliard: May I ask the time this was taking place? The Witness: This took place in 1945.

Q. (By Mr. Tilbury) So what did you do? A. I built my own bulk plant in Vancouver.

Q. Did you use that bulk plant? A. Well, I already had a bulk plant in Vancouver right down in the heart of the city, but the city was urging me to move it out, and so I went ahead and built a new, large one on the outskirts of the city.

[243] Q. Was that in about '45 that you built this, or '46, or something like that? A. '45.

Q. All right. You still used the Kenton plant occasionally, I take it, from your testimony? A. Well, I had a few stations here in Portland of my own and I drew some gas out of the Kenton plant for that and then we drew some gas later on occasionally out of the Kenton plant for some Portland deliveries.

Q. Were these large or small? A. Small.

Q. In comparison with the Vancouver bulk plant, how would the ratio stack up, roughly? A. Oh, I would say ninety-nine to one.

Q. Now, can you identify Exhibits 221A1 and 222F as having come from your office? A. Can I identify them?

Q. Yes, sir. A. Yes, I know what they are. They are invoices from the Standard Oil Company.

Q. All right. Can you identify these as having come directly from Standard? A. They come directly from Standard.

Mr. Tilbury: We would offer into evidence 221A1 and 222F.

[244] The Clerk: 221F.

Mr. Tilbury: 221F, I am sorry.

The Court: They will be received.

(Plaintiff's Exhibit No. 221A1, Aberdeen 1955 invoices, and Plaintiff's Exhibit No. 221F, packet of invoices 1956 Standard to Perkins, Powell, and Harris, were received in evidence.)

Mr. Hilliard: 221A through F?

Mr. Tilbury: No, 221A1 and 221F.

Q. (By Mr. Tilbury) Mr. Perkins, rather than have you go through all of the various invoices, would these be



typical invoices? A. Yes, the invoices are identical all through the entire period.

Q. Now, would you take any particular page, any page that has an invoice on it at random in each of those. A. (Witness opens book.)

Q. Now, sir, would you read the people to whom products are billed? A. To what?

Q. To whom are the products billed on that page, and you better identify the date and place for it, so we have it.

Mr. MacLaury: May we have the invoice number?

Mr. Tilbury: Yes, please.

[245] The Witness: I will try to find one that is not stapled down here, if I can.

Well, here is one, July the 31st, 1956, billed to Clyde A. Perkins. I have to tear it off, I can't—

Q. (By Mr. Tilbury) Well, you better not tear it. A. It is billed to Lee G. Powell, Clyde A. Perkins, Harris Oil Company, and Harris Distributing Company.

[250] A. Everything was billed to Clyde A. Perkins.

Q. Lubricating oils as well as gasoline? A. Yes, sir.

Q. All products? A. Yes, sir.

Q. Now, Mr. Perkins, you traced for us in a general way the pattern of your business and the purchases that you made from the Standard Oil Company; and as I recall, your testimony up to 1954, the business grew, is this true? A. Yes, sir.

Q. Did it grow substantially? A. Very substantially.

[251] Q. All right. And I believe you told us that thereafter it declined? A. It started declining, yes.

Mr. Hilliard: Your Honor, I object to this.

The Court: We are talking about purchases, as I understand, his purchases.

Mr. Hilliard: His purchases from Standard. His purchases and not the over-all growth of this business or some other entity.

Q. (By Mr. Tilbury) Just your personal ones, Mr. Perkins? A. My purchases declined after '54.

Q. All right. Now, why did it decline?

A. It declined. I lost the largest account that I had which included one-third of my business through the Standard Oil.

Q. Which account? A. The Truax Oil Company of Albany, Oregon.

Q. All right. And were there other factors? A. There were other factors.

[252] Q. What are the other factors? A. In 1955 we lost the Carter account to the Signal Gas Company, Signal Oil & Gas Company.

Mr. Hilliard: I object to this, Your Honor, I move that that answer be stricken.

The Court: Yes, members of the jury, the witnesses statement that he lost the account will be left in. We will leave it in the record. You will have to determine by all the evidence what he means by that; but, the Signal Oil is his own conclusion, disregard that.

[253] Q. (By Mr. Tilbury) Did you obtain some products from the Standard Oil Company before 1955 which ultimately were delivered to the Les Carter Oil Company?

[255] A. Yes, I did.

Q. (By Mr. Tilbury) And did anything happen after?

[256] A. After 1955, the sales to the Carter Oil Company diminished and—to nothing.

Q. All right. Now, were there other factors that brought a decline in your business?

Mr. MacLaury: I would object to that. It doesn't pinpoint it to what business he is directing the question to. What business—

Q. (By Mr. Tilbury) Well, identify it particularly in relation to purchases, the purchases of the products which

you made from Standard Oil Company that you indicated declined after 1954, and I am merely asking you if there were other factors besides the Carter, which you have identified, and the Truax, which you have identified? Were there other factors? A. You mean after 1954?

Q. Yes, sir. A. Or 1955?

Q. Yes, sir. A. Well, we lost the Maxwell account. That Maxwell account, we discontinued selling Maxwell—

Mr. MacLaury: I move to strike the answer, Your Honor, and the use of the words "we lost the Maxwell account". The question is directed to Clyde A. Perkins' purchases individually, and he insists on getting into—

The Court: Members of the jury, disregard the witness' [257] statement "we lost the account" until it is identified which one of the entities is involved that have the account, if they had an account.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Mr. Perkins, without getting into the specific accounts, now, as I understand it, in certain cases there were contracts with the corporation and with their customers; is this true? A. That's true.

Q. One of which would have been Maxwell, I take it? A. That's true.

Q. All right. Now, how did you, if you did, transfer the products from yourself individually to the corporations? Was there a formal transfer of some sort or formal sale? A. No.

Q. (By Mr. Tilbury) What I am asking is, how did the— in those situations where the markets were marketed, if they were, by the corporations over here and which you obtained from the Standard Oil Company, how did the product get from [258] yourself over to the corporations? A. Well, Mr. Tilbury, I paid no attention to the corporation. I didn't even consider it—

Mr. Hilhard: Your Honor—

The Witness: —in existence—

Mr. Hilliard: Excuse me. Your Honor, I object to that and move to strike it as non-responsive. The question was "How did the product get from Mr. Perkins to the corporation?"

The Court: Well, I am somewhat myself at a loss to explain that when, actually, nothing happened in the sense of the word.

Mr. Tilbury: That's about it.

The Court: So whether or not it was a book transaction, whether or not it was by memorandum or note or what, I suppose that would get at the basis of what we mean by "how was it transferred."

Mr. Tilbury: Yes, sir.

The Court: So the witness' statement about his not considering any difference, in that sense of the word, it is his own thinking about it. It is his conclusion, and it is stricken from the record. Disregard it.

Q. (By Mr. Tilbury) Did you send bills, for example, to the corporations, either of them? A. No, I did not.

Q. Did you send invoices to them? [259] A. No.

Q. Did you have a contract with either of the corporations? A. No.

Q. Would the only documents that pertained to the corporations be those that you identified for us yesterday, being Exhibits 1017 to 1049, Defendant's exhibits, now remarked as Plaintiff's 400 through 422? Would these be the documents? A. I don't know the numbers, but those documents that I identified yesterday, that was the only documents we had.

Q. All right. Now, was there a formal exchange of letters between you and the two corporations— A. Never.

Q. —in any way? Did they have a separate office— A. No.

Q. —from yours? What office did you hold in the corporations, if at all? A. President.

Q. And were there other officers? A. Secretary and Treasurer.

Q. Who were they? A. My son was Secretary and my nephew was Treasurer.

Q. All right. A. That is, when we incorporated, that is the names we had taken.

Q. Did you have a Board of Directors as such? [260] A. We were the Board of Directors.

Q. All right. Now, were there other factors that brought—without identifying the specific customers or where they went and the like, was there anything else that happened after 1954 that led to a decline in your purchases individually from the Standard Oil Company? A. You mean in the year of '54 or after '54?

Q. In the year '54 or thereafter throughout the balance of your relationship with Standard. I am not asking you to go over every particular customer now. We will, I think, reserve that until later in order to present the thing a little more orderly. A. Well, the biggest—the two largest factors that we had in the decline of my purchases from the Standard Oil was the discontinuance of my deliveries to certain accounts. That was one of the big declines. And then the other, and the thing that was—finally finished us up was the—the depressed market—retail market, which was caused by the—

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[262] Q. (By Mr. Tilbury) Mr. Perkins, during the claim period, did you personally operate retail stations in the area of the Standard contract? A. Yes.

Q. To what extent? A. Well, our station at Vancouver, our large station there, we operated that continuously all of this time.

Mr. Hilliard: I object to this testimony. The question was, did he personally operate stations during '55 through '57 and he is talking about "we" now, which includes the corporations.

The Court: It will be sustained.

Q. (By Mr. Tilbury) Mr. Perkins, you identified for us yesterday certain documents marked 1017 to 1049, which in



some cases, without identifying each one individually, were leases from yourself and your wife to the corporations, is that the case? A. That is right.

Q. Now, were there some stations that were not leased to the corporations? A. Yes, there were some stations weren't leased.

Q. And where were these stations that were not leased, if you can recall? A. Well, I don't think the station in Centralia was leased [263] to the corporation. The plant was, I don't think the station was.

Mr. Hilliard: Your Honor, we would ask that the witness—we deem it is irrelevant, the ownership, and his relationship to the station, but if he is going to testify about the lease of the station, can he tell us if it is one he owns, if it is or is not leased out to somebody else.

Mr. Tilbury: I would be glad to ask him that.

Q. (By Mr. Tilbury) Did you own the one in Centralia? A. I did.

Q. Did you own the station as well as the bulk plant? A. Yes, sir.

Q. Now, you made a distinction between the bulk plant and the retail station. Are they adjoining one another? A. Well, they are close to one another, yes.

Q. All right. What was the distinction between their operations, as far as the relationship between you and the corporation? A. One was strictly wholesale, and the other one was strictly retail.

Q. What I am getting at, one of these, I gather, was leased to the corporation, Perkins Oil of Washington? A. I know the wholesale part of it, the distributing part of it, the bulk plant was leased to the corporation.

Q. How about the retail station? [264] A. Well, I don't think the retail station was, because we had an operator in there for many years and we just let him stay like he was.

[265] Q. (By Mr. Tilbury) How was this operated, actually, Mr. Perkins? A. The Centralia station?

Q. Just that, no other at the moment. A. It was operated first by hired help and then it was operated by a lease to Mr. Helgeson.

Q. Mr. Irv Helgeson? A. Yes.

[266] Q. (By Mr. Tilbury) As far as the employees were concerned there at that company—Mr. Helgeson was a lessee, is this true? A. He was a lessee.

Q. All right. Now, there was some kind of lease then from the corporation to Mr. Helgeson, is this the case? A. For that station?

Q. Yes, sir. A. It might have been, but I don't think there were.

Q. All right. A. I don't think there was a lease to Mr. Helgeson for the station. I leased him the station myself, personally several years before, that is before the corporation went in, and I don't think it was ever changed. I don't remember if it ever was.

Q. All right. Now, the lease involving the corporation [267] pertained to the bulk plant, is that the case? A. Yes, sir.

Q. And did Mr. Helgeson operate the bulk plant as well as the retail station? A. He started to operate it and then it was turned over later to Mr. Les Carter.

[268] Q. (By Mr. Tilbury) Mr. Perkins, referring you to what has now been marked as 274, which apparently pertains to a Centralia operation, are these some of the leases from the corporation, or to the corporation from yourself and your wife? A. Yes, sir.

Q. And do they pertain—can you tell offhand the bulk plant or the retail station or both and what it is? A. It would seem to me by looking at this lease without checking the legal description that we have reserved in here—the only thing that is in this lease is the Centralia plant, the cafe, and the other stuff is all excluded from the lease.

Q. By "plant" what do you mean? A. Well, that is the wholesale part of the plant.

Q. All right. In other words, the documents that you are looking at are leases from yourself to the corporations—

A. Yes sir.

Q. —with respect to the bulk plant only? [269] A. I beg your pardon.

Q. With respect to the bulk plant only? A. Well, that is the way it reads here.

Q. All right. A. You see I did this many years ago, and, well, as a matter of fact, Mr. Tilbury, after we did recognize the corporation I just forgot it and paid no attention to it. I just didn't even know that I now had a corporation. I didn't pay any attention to it.

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[272] Q. (By Mr. Tilbury) All right. Now, Mr. Perkins let's take a station where you had people that were—now, not using the word "your"—where there were people in the station who were paid a salary by someone, can you think of such a case during that period? A. Well, yes, I had a station in Astoria that I paid a young man a salary.

Q. All right. Now, who paid this salary? A. I did, personally.

Q. All right. Now, the Astoria station, why, was that leased to the corporations, either of them at any time?

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[273] Q. (By Mr. Tilbury) Without getting into the specifics of all the particular stations, was that station—no, first of all, who owned the land; let's take it step by step? A. I owned the land.

Q. All right. Did you lease that to the corporation at any time? A. No.

Q. Did you lease it to anyone else at any time? A. Yes.

Q. And to whom did you lease it? A. To the West—to the Westway Oil Company, Union Oil Company.

Q. Now, all right, this is at the termination of your agreement with Standard? A. Yes.

Q. Is that the time you are talking about? A. Yes.

Q. During the claimed period, was it leased to anyone, to your knowledge? A. No.

Q. And you had in there an individual to whom you paid a salary personally, is this true? A. Yes.

[274] Q. All right. Now, Mr. Perkins, with respect to other locations— A. Well, I say I paid him a salary. He had a drawing account out of the station.

Q. All right. Who supplied the drawing account? A. Well, I did.

Q. Did the station sustain the loss during the claimed period? A. Yes.

Q. Who sustained it? A. I did.

[277] Mr. MacLaury: Well, I might cut this short if counsel would be willing to accept this. I have quoted here from one of our briefs a portion of the amendment to interrogatory number two.

The Court: If you read that to me, then I can—

Mr. MacLaury: It reads as follows: "Plaintiff"—there is an omission, and then to continue the quote—"Sold his products through distributors, consignees, or lessees. However, plaintiff did engage in the retail business by operating continuously at the retail station at the main office in Vancouver."

There has been an omission in my copy. To continue the [278] quotation: "In addition"—omission, and then continue quotation—"he maintained salaried employees intermittently in retail stations throughout his area of operations. For example, from time to time, he maintained salaried personnel in retail stations at Roseburg, Astoria, The Dalles, White Salmon, Centralia, Portland, Hood River, Riddle, Aberdeen, and probably at other locations."

Mr. Tilbury: We will accept that as a fair statement.

The Court: All right. I am satisfied now. I will overrule the objection.

Q. (By Mr. Tilbury) Mr. Perkins, now, a member—let's take the stations, and instead of taking all of them, let's take Vancouver. You indicated there is a station, we will say, without identifying whose station it is for the time being, north of the City of Vancouver on the old highway; is this true? A. Yes, sir.

Q. And what is that station referred to? What name does it have? A. At the present time?

Q. Yes. A. It is referred to now as Eagle Fleet.

Q. All right. During the claim period, what title did it have? A. It was referred to as the Champion station.

[279] Q. How far north of the city of Vancouver is it? A. About a half a mile.

Q. Do you own the land there? A. Yes, sir.

Q. Was this station one that was leased—one of those leases that you identified yesterday to the corporation? By that, I mean Perkins Oil of Washington. A. Yes, sir.

Q. All right. Now, were there people in that station from time to time who were paid salaries?

Mr. Hilliard: Your Honor, I object to this—

The Witness: Yes, sir.

. . . . .  
[281] Mr. Hilliard: Your Honor, the big point I have, if he wants to offer claims of the corporations—and Your Honor knows our legal position on it—then I think, in the order of proof, he should offer whatever he is relying on to get the claims before the Court. If it is the assignments, then he should offer those, and then we have the order of things and we can make our record on this as we go along here without my having to state these vague objections, because I am not sure what entity he is talking about.

Mr. Tilbury: As long as Mr. Hilliard has made his point, I would like to make mine, and that is that our position is not to abandoned. This is Mr. Perkins' individual operation. It was treated as such. It was not accepted by the Standard Oil Company. They would not recognize either



corporations. The corporations were merely vehicles which, in fact, were never carried out, except for bookkeeping purposes.

The Court: Yes. The jury has been advised of your respective positions about it. Now it is just a matter of how you can get at the order of proof. It was my suggestion that possibly you can channel them in along the lines of the three entities so that when you are talking about a customer of one unit handling the books of that unit, they know who you are talking about rather than skipping from one to the other.

[282] Mr. Hilliard: That is right, Your Honor. One more thing: If he wants to talk about the corporations back and forth here, he should—I was just suggesting that in his order of proof, put in his claim of the corporations or the right to be before the Court, and then he refers to one or the other. My objection will be for specificity there and not the fact that those claims have not been shown before the Court. That is why I was suggesting that if he is, by his contentions, relying on assignment, then the order of proof would require that.

The Court: Well, he doesn't have to do that, if at all.

Q. (By Mr. Tilbury) Mr. Perkins, with respect to that station at Vancouver, the one that we are dealing with, may I ask, with respect to the employees at that station that were there from time to time, who paid their salaries?

Mr. Hilliard: I object to this. There is no time specified. It was leased and not operated by this individual, but by the corporations. I thought we just covered the point that he was going to do them individually—

The Court: Pinpoint what time we are talking about.

Mr. Tilbury: All right, sir.

Q. (By Mr. Tilbury) During the claim period, now, Mr. Perkins, in those instances where there were employees at the stations, I am merely attempting to ask you now who paid their salaries. [283] A. They were employees at the station, and they was paid—I can't say for sure, but—

whether they was paid out of the family account or whether they were paid out of the station account. I think they was paid out of the family general account.

Q. (By Mr. Tilbury) What is that, sir? A. We have one general account which we call the family payroll account. And any time there is an expense of any kind from any of the stations or salaries or for material or things like that, it was paid out of that account. Then each station or each person that had the properties would reimburse the account for what was paid out. If they would—in a piece of property that I owned, for instance, I had [284] an apartment house, and if I would have a roof put on that, they would pay it out of that account. Then I would replenish the money to the account.

Mr. Hilliard: May I ask a question or two in aid of a motion, Your Honor?

The Court: You may.

Mr. Hilliard: In whose name was this account carried? What bank name? Bank account?

Mr. Tilbury: The name of the bank? Is that—

Mr. Hilliard: No, excuse me. In whose name was the bank account carried?

The Witness: I just can't tell you what the technical name was. Mrs. Ross is there (indicating). She would know. She handled the account. We've had that account like that for many, many years, and I just can't know which—how she designated it at the bank, whether it was called Perkins Oil special account or Perkins Oil payroll account or Perkins Oil something. I wouldn't know that.

Mr. Hilliard: All right. On whose books was it carried? Was it carried on C. A. Perkins real estate operation?

The Witness: No, I wouldn't think so.

Mr. Hilliard: Was it carried on the Perkins Oil Company of Washington corporate books?

The Witness: No, I don't think it was carried on their books.

[285] Mr. Hilliard: Was it carried on L. Allen Perkins and W. M. Lennington partnership books?

The Witness: I don't think it was carried on any books. I think it was simply a family account that we had there.

. . . . .

[286] Mr. Hilliard: It isn't on there. Now, is it on any C. A. Perkins' books?

The Witness: I can't tell you what book it is on or what accounts. It is a revolving account that is just there in the bank. It is a revolving account. I first started it and put the money into it myself, and it's been a revolving [287] account there for years.

Mr. Hilliard: Well, is it your testimony that all of your business obligations are paid out of this account?

The Witness: My business obligations?

Mr. Hilliard: Yes.

The Witness: No. No, not all of my business obligations are paid out of that account.

Mr. Hilliard: Well—

The Witness: But any labor that I would hire would be paid out of that account.

. . . . .

[290] Q. (By Mr. Tilbury) While he is looking for that, I will ask you, did you and Mr. Harris and Mr. Powell reach some sort of understanding at some time with respect to the areas in which each of you were to operate under the Standard agreement? A. Did we have an arrangement?

Q. Yes. A. Yes, sir, we did.

Q. Would you look at Exhibit 4B, please.

(Whereupon the baliff handed the document to the witness.)

A. This is 4B.

[291] Q. Are you familiar with this document? I realize it is an enlargement. A. Yes, I am familiar with it.

Q. Is this something you had some part in? A. Yes.

Q. Can you identify the facsimile of, your signature there? A. Yes, sir.

Q. And what is it? A. This is a map that outlines the territory of Perkins, Harris, and Powell.

Mr. Tilbury: We would offer in evidence Exhibit 4B.

The Court: What was the number, please?

Mr. Tilbury: 4B.

The Court: Thank you. It will be received.

(PLAINTIFF'S EXHIBIT No. 4B, a map, was received in evidence.)

Mr. Tilbury: I wonder if you could put that on the board for the moment.

(Whereupon the bailiff attached the map to the easel.)

Q. (By Mr. Tilbury) Mr. Perkins, if you would come over to this area, please.

(Whereupon the witness came to the easel.)

Q. Now, I notice the date on the document appearing August 4th, 1953, is that about the date? [292] A. That is the date we signed it.

Q. All right. Now, what was the purpose of this agreement? What were you doing? A. We were agreeing on the territory which we would serve.

Q. All right. Now, you made certain marks, I gather, on this, or somebody did? A. Yes, sir.

Q. And this is your signature over here, is it, on the lower right-hand corner, together with Mr. G. R. Harris, and L. G. Powell? A. Yes, sir.

Q. What areas were allocated to you on that date? A. This area here in Northwest—in the Southwest Washington, this area here in the eastern part of Oregon.

Q. All right. Maybe you better identify the cities, if you will here, just in a general way. A. All right, this area right here takes care of everything up to and including Aberdeen and over to past Yakima and down to Pasco, not quite to Pasco, to Heppner, and then on down in the

Oregon territory to—it is not much of a city I can find there, the nearest one I could find is Richmond, and straight across that county line and then up this way and ending at Beacon Rock. That is just north of Multnomah County, ending at the edge of Multnomah County.

Q. Will you continue over to the Coast. [293] A. Then I continued over here in Oregon. I had all of this territory here in Oregon. (Indicating)

Q. I think you better define it. A. That is Clatsop County, including Astoria and Seaside and Rainier and that part of the county in there—not Rainier, I am in error about that. We did not go to Rainier, we went down to Westport.

Now then, in here I had this strip of territory starting at the Siletz and going straight across, well, I don't see any town there, but straight across and then down. (Indicating) It takes in the towns of Albany and Lebanon and Corvallis and Junction City and right down close to Eugene there.

Q. Apparently there is something here that is surplus. What is the purpose of that? A. There is an account there that Harris and Powell had been serving and they requested to continue serving it, which we gave them a letter to continue servicing that account.

Q. What city was that? A. That is the City of Philomath. Now then, we started in down here north of Reedsport and we went across there and then up right close to Eugene, almost to the city limits of Eugene, and straight across. I thought I might see a town over there. I don't see a town over there, but [294] it takes in everything and then right straight due south to the California line and across the California line and up to the coast.

Q. All right. Did you have all of the Washington end of the business allocated to Champion group? A. Yes, all the Washington end.

Q. You had most of Southern Oregon, except shown by Harris and Powell here? A. Yes.



Q. And then you had a strip in the middle around Albany and Corvallis and Lebanon, and the like? A. Junction City and Harrisburg and all of that territory in there.

Q. All right. Now, did this plan remain pretty much true during the claim period, '55 through '57? Was it pretty much the same or were there changes? A. I don't believe there was any changes.

Q. All right. Now, did Mr. Harris and Mr. Powell and the Perkins, yourself, Clyde Perkins, pretty well respect the others' territory? A. Yes, we did respect the others' territory. There was one change that we had made. We had given them the right to go into our territory in Philomath. They gave me the right to build a service station in the City of Portland out in the southwest part of the city, in St. Johns.

[295] Q. Is that southwest part, are you sure about the St. Johns part? A. Is that southwest?

Q. Well, I don't believe St. Johns would be regarded as southwest, no. Are you referring to the station at North Burgard Street? A. That isn't southwest?

Q. No, I don't believe you would call it southwest. A. Well, maybe you call it northwest then. What about northwest?

Q. All right. What is the address of the station? A. I can't tell you the address.

Q. All right. Can you identify it in terms of what might be around it so we have the area clear? A. Well, it is not quite directly, but it is across the street from the Continental Can Company.

Q. All right. And that is a service station? A. That is a service station and also a large truck station there.

Q. And that truck station was used by whom? A. By the Portland Motor Transport.

Q. Did they have their garage near by? A. Yes, sir.

Q. And there were pumps out in front of it?

Mr. Mac Laury: I object to leading, Your Honor. Let [296] the witness describe the station.

Q. (By Mr. Tilbury) Were there pumps nearby? A. We wanted to build a station and Mr. Harris and Mr. Powell gave me the—

Mr. Mac Laury: (Interposing) I object, Your Honor, to what Mr. Harris and Mr. Powell gave him the right to do. If it is in some document here, why, we can look at it. It doesn't bind Standard Oil Company.

Q. (By Mr. Tilbury) There wasn't a document? A. No document at all.

Q. All right. While you are there, Mr. Perkins, as long as we have the picture, would you mind looking at what has been marked and received as Plaintiff's Exhibit 252, and I realize you haven't had much of a chance to study this, but—

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Q. (By Mr. Tilbury) Mr. Perkins, will you identify for us, [297] please, the location—first, let's take the station you talked about earlier, the one north of Vancouver. Where would that be, sir? A. North of Vancouver, it would be right there. (Indicating)

Q. All right. Did you have other stations that were supplied by products which you obtained from the Standard Oil Company in the City of Vancouver? A. Yes, I did.

Q. Where were they? A. I had one at 26th and Kauffman.

Mr. Mac Laury: May we have it specified, the witness is talking about himself personally, is he talking about one of the corporations?

Q. (By Mr. Tilbury) Go ahead, Mr. Perkins. A. I am sorry. Did he ask me a question?

Mr. Mac Laury: I am asking the Court for a ruling that the witness specify whether he is talking about himself personally or a corporation.

The Witness: I was talking about myself personally, if that is what you wanted to know. He asked me where my station was.

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[298] Q. (By Mr. Tilbury) I will try to ask him this question, if you will permit it.

Mr. Perkins, generally speaking, were most of the stations that you owned leased to the corporation in 1952, and these are the documents you identified the other day? A. Yes.

Q. Now, was this one in that category? Was this one where you owned the land and leased it to the corporation? A. Yes.

Q. All right. Now, can you identify the location of that station? A. You are talking about the main plant; that is just right there at the edge of the city limits of Vancouver. Now, there is another station that is right here at 26th and Kauffman.

Q. That is the one that you said where you owned the land and leased it to the corporation? A. Yes.

Q. All right. When I use the word "corporation" in the [299] sense, is a fair statement to say anything in Washington would be Perkins Oil of Washington and anything in Oregon would be Perkins Oil of Oregon, is that correct? A. Yes.

Q. Were there others? A. Yes, there is one at Manor Highway, right in the city limits, this highway here. (Indicating)

Q. What kind of station was it? A. A service station.

Q. I see. Is this one where you owned the land and leased it to the corporation? A. Yes, I own all of these, the land. There is one right out here to the edge of it here which I owned all of the land and all of the facilities.

Q. Did you lease it to the corporation? A. Yes.

Q. Will you identify that in terms of some other way other than just at the edge? A. I think we call that Ridgefield Junction. There is one right here—wait a minute.

Q. The Ridgefield Junction on the highway north of the city? A. Yes, on '99.

Q. That is still on the highway? A. It has just been torn down the last month or two by the [300] state.

Q. All right. Thank you. A. I have one right in the City of Camas.

Q. Mr. Perkins, would you mind putting a "P" at the locations you have located so it will be clear? Maybe you better do that over the noon hour, rather than take the time now, and get the locations.

Q. Whichever way you want. Then I have another one right here at Washougal. (Indicating)

[301] Q. (By Mr. Tilbury) Maybe you had better, if you can do it, now put a "P" at those locations where the service stations are that you have identified? A. Well, this is a small map, and I will do my very best. I might miss it a street or two, assuming that this is the city limits right here (illustrating), which I assume that it is because that is Bonneville Power right there (illustrating). So, I will put one—why can't I just draw a round ring?

Q. All right. A. I will draw a round ring right there (illustrating). This is one out here (illustrating), if I am correct on that, because that seems to be just about the area. It is right there (illustrating). I have one on this highway that is right there (Illustrating). I have one right out here (illustrating). I had one right out here (illustrating). Let's see if I can find the highway. Right at that junction there. I believe that is the junction. I could be wrong on that, but the streets aren't marked, but that looks to me like the street the junction.

Q. What is that called? A. Dollar Corners.

Q. All right, now— A. I might be off a few streets on that.

Q. Now, as you reach these, if you can tell us, is this [302] where you owned the land and leased it to the corporation, if you recall? A. That station was never leased to the corporation because I owned the land and loaned the boys some money to build this station and they built this station.

Q. Now, maybe you better identify "the boys" for us again? A. That is Allen Perkins, my son, and my nephew.



Q. Now, let me ask while we are on that subject, did they have a particular name that they called these stations that they owned? A. I believe they called them Perkins and Lennington.

Q. They started to construct some stations at some time, did they? A. Yes, they did. We started a building program along about '54 and '5, '55.

Q. You had better not use the word "we". A. I won't say I started the building program and assisted them in a building program.

Q. All right. Now, there were some stations that your son and your nephew built under the names of Perkins and Lennington? A. Yes.

Q. All right. If we reach a situation like that, you tell us; and these were constructed pretty much towards the [303] latter part of your relationship with Standard or towards the beginning, or when; I am now speaking of Perkins and Lennington? A. Well, they were, they were—they started—we started this building program. I started the building program when our gallonage started to decline directly after we lost the Truax account.

Q. And that is what year? A. That was '54. Now, we built in '54 and in '55. I built stations, and they built stations trying to recover our gallonage. Now, on the Hood River station, I owned the land, and the same thing, they built the station.

Q. By "they," you mean Allen Perkins and Marvin Lennington? A. Perkins and Lennington built the station.

Q. All right. Now, Mr. Perkins, will you continue on with those stations you are identifying? A. I will identify a station here, a station right there (illustrating) at 26th Street, some place along there. It is pretty hard for me to locate it from here, right in there, I guess (illustrating). Now, I have a station right here in the heart of Camas right down in Camas. I can't tell you by this what it means here, but it is right there, (illustrating), right on the main



—it is right on the [304] main highway down here (illustrating). Right down there, right on the highway.

Q. Now you had better identify where "right down there" is? A. Well, it is on the highway. The highway goes through Camas. I mean right on the highway.

Q. Now, what did you call that station? A. Well, we purchased that from the Coops, and I think we called it the Coop Station; and just to the east of Camas at the edge of Camas we had another station on the street on what is called Third and Franklin, which is right on the highway; still there.

Mr. Hilliard: Your Honor, if counsel would provide for us or specify the ownership, at least we wouldn't have to object.

Q. (By Mr. Tilbury) Would you specify for us, please, the ownership? A. Yes. I am talking about the one I owned, I had owned. I owned the property, the building and all the facilities.

Mr. Hilliard: And leased it to the corporation?

The Witness: They were in the lease to the corporation. Right here at Washougal, right on the highway in Washougal, I had another station. I owned the real property and all of the facilities, and I leased half of that to the [305] corporation.

Q. (By Mr. Tilbury) Which half? A. The east half. The reason for it is because I had another tenant in the last half, and they had taken the part that didn't have the tenant.

Mr. MacLaury: Well, you leased the part—so we will have some specifications, what was it, a retail outlet or a service department?

The Witness: They took the part that had the retail pumps in it.

Mr. MacLaury: When you say "they"?

The Witness: I am talking about Perkins and Lennington.

A. (Continuing) Now, then, in this particular area, I had other stations scattered out around here, but in that area as far as I can remember—oh, yes, I had one right out—well, let's see if I can get this one. It was on the main highway. Well, I guess it was right, right in there at Battleground. I guess it would be right in here called Union Corners (illustrating), and I had another station that was not leased. Now, that station was not leased to the boys. I had another station at that time right at the edge of the city limits, right here (illustrating) called—that was right—I hope—these streets aren't numbered, but I hope I'm getting this somewhere near [306] around right. But, I would say it was right in right there. Right there (illustrating). I see a building right there and I think it is my building right there (illustrating).

Q. What is it called? A. It is called Three Corners, that was not leased by the corporation. The reason for that was because I had other tenants already in there and didn't want to disturb them.

Q. What kind of a building was it? A. It was a combination grocery store and service station.

Mr. Hilliard: For clarification on the last two, could I ask the witness: They had already been leased to other tenants?

The Witness: Yes.

Q. (By Mr. Tilbury) By yourself? A. Yes, by myself.

Q. The corporations were not in that? A. Not in it at all.

Q. All right. Now, could you show us the location of the one north Portland, North Burgard Street or can you pick that out? A. Well, let's see. Where is the river? There are no streets marked on this thing here. It must be right. It must be. I would say it is right there. (Illustrating) Because there is the railroad track going across there, and [307] I know the railroad track was very close to us there. I think that is possibly right there where it was. There's no streets here (illustrating), and I could be wrong in my positive identification.

Q. Did you own the land? A. Yes, I owned the land.

Q. Was it leased to Perkins Oil of Oregon in this case, if you recall? A. I leased it to the Portland Motor Transport Company.

Q. All right. And this you have identified as being a corporation, or do you know? A. That was owned by my son and a Marvin Lennington; there was another party that had a very small interest, Flay Silliman, and they gave him some stock.

Q. Flay Silliman? A. Flay Silliman.

Q. Now, subsequently, they have withdrawn from that company, have they; by "they" I mean Mr. Allen Perkins and Mr. Marvin Lennington? A. Yes, they don't own it any more.

Q. All right. Now, have we covered the waterfront, or are there others? A. Well, you are talking about during the claims period?

Q. Yes, sir that's right. [308] A. I think that as far as I know, as far as I can remember just now. Oh, yes, I had—we had another one. Now, wait a minute. I only had an interest in that. I had it just past my station on the other side.

Q. Oh, that was products that you obtained from Standard? A. Yes.

Q. Where would it be located? A. Right across the street from the station. It is right in the city of Hazedel.

Q. What kind of interest did you have in that? A. Well, it is pretty hard to tell you what kind of interest I had because I helped my nephew buy it, and he wanted to own it, and I helped him buy it, and that would be right in Hazedel there.

[317] Q. (By Mr. Perkins) Directing your attention to Exhibit 275, the document just referred to, is this the so-called family payroll account? A. Yes, sir.

Q. And was this used for the payment of salaries among other things? A. Yes, sir.

Q. And would employees that you hired individually for some other reason other than the petroleum business be paid in this account? A. I beg your pardon?

Q. Suppose you had employees that did work for you in some other capacity than the petroleum business. Were they paid from this account from time to time? [318] A. Yes, sir.

Q. All right. Is this account something that would be maintained primarily by Mrs. Maxine Ross, your bookkeeper? A. Yes, sir.

Q. Has Mrs. Ross been with you a number of years? A. Oh, for over thirty years.

Q. Is she your individual employee? A. Yes, sir.

Q. Has she been for this some thirty-three years? A. Yes, sir.

Q. Thank you.

Mr. Tilbury: We would offer in evidence Exhibit 275.

The Court: Any objection?

Mr. Hilliard: May I ask a question or two about that.

The Court: You may.

Mr. Hilliard: You mentioned that as a family account. Who is in that family you are talking about, who comprises this family for which this is an account?

The Witness: Well, I use that name, Mr. Hilliard, because I started this account in the early 50's myself, and then later on I took in Marvin and Allen into this account. That is why we all called it the family account.

Q. (By Mr. Tilbury) Then you are speaking of yourself, Marvin Lennington, and Allen Perkins? A. That is right.

[319] Q. And when you say it is our family account, do you mean that you each draw checks on an account that are recorded in that book? A. Just for payroll only.

Mr. Hilliard: Payroll of whom? What payroll? What company? What organization?

The Witness: Any company. Any payroll that we might have. Anyone that might work for any of us or one that

would work for the three of us. It would all be paid out of this account.

Mr. Hilliard: And on the bank account, when you draw a check and record it there, at whose name is that bank account?

The Witness: In whose name is the bank account?

Mr. Hilliard: Right, on which those checks are drawn there.

The Witness: I believe the bank account is in the name of Perkins and Lennington.

Mr. Hilliard: That is Perkins and Lennington, a partnership, isn't it?

The Witness: No, that wouldn't be a partnership. We just use that name to designate from other bank accounts that we have.

Mr. Hilliard: The Perkins there is Allen Perkins, isn't it?

[320] The Witness: No, it is not Allen Perkins any more than it is me.

Mr. Hilliard: That is not L. Allen Perkins and Marvin Lennington account?

The Witness: No.

[321] Mr. Hilliard: How about the corporations, do you see any checks there that are corporation employees, payments to corporation employees?

The Witness: Well, there are checks here to all employees, whether they were corporations or not.

Mr. Hilliard: How about Don Raymond? Would you check through there and see if there are any checks paid to Don Raymond?

The Witness: Don wasn't in this as a checking account. He had a drawing account and drew from our own account in Astoria.

Mr. Hilliard: The answer is that Don Raymond, there are no checks recorded to Don Raymond?



The Witness: That I don't know. I haven't looked through this. I don't know whether there are or not. This is a long list of checks here over a period of years, and I don't—I would have to go, search everyone of them first to see if his name is in here.

Mr. Hilliard: Did you issue checks on that account or was it only the bookkeeper?

The Witness: Just the bookkeeper.

[322] Mr. Hilliard: So you have no personal knowledge of the identity of the bank account on which it is drawn. You are merely saying something that your bookkeeper told you at the noon hour.

The Witness: Well, I know of this account and I sign the checks.

Mr. Hilliard: You did sign the checks?

The Witness: Yes.

Mr. Hilliard: Did you sign the checks for the corporation?

The Witness: It was not signed by the corporation. This was a, if I remember right, it was not a corporation check.

Mr. Hilliard: You mean none of those checks?

The Witness: If I remember right. I am sure I don't know, Mr. Hilliard. You would have to get the accountants to explain this to you fully.

Mr. Hilliard: Let me ask you this, can I trace any payment from there as payment to employees on your personal records of C. A. Perkins?

The Witness: I am sure that you can if you are an accountant. I am sure you can.

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[325] Mr. Hilliard: In other words, you can't identify any names on there in the capacity of being paid by you to work on the station?

The Witness: Yes, sir. Here's one right here. Here's Howard English. I recognize him very well.

Mr. Hilliard: To what year is that?

The Witness: That is in November of 1957; November the first, 1957.

[326] The Witness: Howard English did a considerable amount of work on my service stations also.

Mr. Hilliard: Can you explain to me how David H. English is carried as an employee on the payrolls of the Perkins Oil Company of Washington?

The Witness: I don't know how you would carry it. I see his name here, and I know he worked directly for me.

Mr. Hilliard: If I told you that the Perkins Oil Company of Washington corporate payroll expense carried David H. English as an employee for the year ending 1957, would you agree with that?

The Witness: They could have. He done some work for the corporation too.

Mr. Hilliard: He was an employee of the corporation?

The Witness: Well, he wouldn't be a steady employee [327] because both of these people were maintenance people. He might have worked two days for me and two days for them and somebody else.

Mr. Hilliard: Anybody else on there?

The Witness: I'm just trying to glance through to see.

Mr. Hilliard: Would you?

The Witness: Do you see King?

Mr. Hilliard: How do you spell that?

The Witness: K-i-n-g.

Mr. Hilliard: What year did he work?

The Witness: October, 1957.

Mr. Hilliard: And was he operating the service station?

The Witness: No, sir. Mr. King was a carpenter.

Mr. Hilliard: Well, where did he do some work for you.

The Witness: Mr. King did work on my residence, and he did work on some of my service stations.

Mr. Hilliard: Do you have anybody on that list that operated a service station for you as an employee?

The Witness: That operated a service station?

Mr. Hilliard: Yes.

The Witness: Oh, yes.

Mr. Hilliard: As an employee of yours?

[328] The Witness: Everyone that worked in our service stations is in this list.

Mr. Hilliard: I didn't ask you about "our service stations"?

The Witness: In my service stations.

Mr. Hilliard: As an employee of yours?

The Witness: Yes, in my service stations.

Mr. Hilliard: And you are saying they are shown to be an operator of a service station and an employee of yours on that list; that is, of you personally, Mr. Perkins?

The Witness: Well, I can't tell you how she carried it, but I know they are on this list here. I can't tell you how they carried it, but they are on here.

Mr. Hilliard: Would you tell the name of the employee of yours that operated a station?

The Witness: Well, there is a lot of names on here, Mr. Hilliard, that I don't recognize at all. Here is Bill Perry, yes. Now there's a man that worked on our, in our service station. I remember that very well.

Mr. Hilliard: Now, your telling me that Bill Perry was an employee of yours?

The Witness: Yes, at the company owned station in Vancouver.

Mr. Hilliard: Well, now, Mr. Perkins—

[329] The Witness: At our own station.

Mr. Hilliard: I am trying to distinguish between the corporate stations and something you operated personally. Now, Mr. Perry was an employee of the Perkins Oil Company of Washington, was he not?

The Witness: Well, that could've been. I hired all of the people that worked for the stations; and in what category they went into, that I can't answer.

Mr. Hilliard: Well, you can't—there are none on that list that worked for you personally, is that not true?

The Witness: Anybody only that worked for me personally?

Mr. Hilliard: As an operator of a service station?

The Witness: Well, it depends on what you mean, Mr. Hilliard.

Mr. Hilliard: Well, I will explain what I mean, Mr. Perkins, worked in a station operated by you?

Mr. Tilbury: Your Honor, we must object to this for the reason that Mr. Hilliard apparently is attempting to get Mr. Perkins to accept his theory, which apparently is the corporations were something all together different from Mr. Perkins. It is our contention at that time, and I think the record indicates there was no such a distinction. It was Standard's choice itself by declining to recognize the corporation. Therefore, he operated individually.

[330] The Court: I might suggest to you, counsel, that you want counsel to accept your theories.

Mr. Tilbury: Your Honor, that is the difference.

The Court: He may continue.

The Witness: Now, there's a lot of service station operators in here, but I don't know which account replaced the money to this account here. That I wouldn't know, unless somebody would run out these distributions.

Mr. Hilliard: Well, may I ask you this question once more, Mr. Perkins; do you know as a fact that there is not on that a list that you have in front of you any individual working as an employee in a station operated by you as an employee of yours?

The Witness: Well, Mr. Hilliard, I figured they were all employees of mine.

Mr. Hilliard: Well, Mr. Perkins—

The Witness: And I do today, too.

Mr. Hilliard: Excuse me, Your Honor. That is non-responsive now.

Do you know the distinction between the corporations and yourself individually?

The Witness: Yes, I know the difference between a corporation and an individual.

Mr. Hilliard: All right. Now, you as an individual operator of a station, isn't it a fact that there is no

[331] name listed on that payroll account book expense book reading account book, expense book that was an employee of yours?

The Witness: I am unable to answer that question.

Mr. Hilliard: Of your stations?

The Witness: I would be unable to answer that question. You want—

Mr. Hilliard: I say the distribution of the employees?

The Witness: Now, Mr. Hilliard, after the—after the corporation was turned on.

Mr. Hilliard: I object to that.

The Witness: We just forgot it. You are asking me a question. I am trying to tell you.

Mr. Hilliard: No, I am not trying to ask. I move to strike that as a conclusion of his.

The Witness: We forgot the corporation entirely and operated as we had been for years and years and years.

[334] Q. (By Mr. Tilbury) I believe that my notes are correct that you indicated yesterday that you had formed these two corporations with the hope and expectations that eventually your family, that is, your son and your nephew would be taking over the operations? A. Yes, that's right.

Q. (By Mr. Tilbury) The contract in 1953, was that in your individual name? A. Yes, sir.

Q. And was that prepared by attorneys for the Standard Oil Company as far as you know? [335] A. Yes, sir.

Q. Now, in view of the fact that the corporations were not on this contract, why did you continue to operate your books on the basis of two corporate set-ups? A. Well, I had two very definite reasons. The main reason for carrying on with the corporations, we—was on account of the tax situation; then we went ahead and had all of our stationery printed, printed, and we have different taxes in Oregon and different taxes in Washington; and we just continued that way on account of the tax situation.



Q. During the claimed period in particular, did these corporations make money themselves? A. No, these corporations did not—

Mr. Hilliard: I object to this, Your Honor.

A. —ever make money.

Mr. Hilliard: I object to the testimony about the corporations and whether or not they make money.

The Court: The objection will be sustained.

Q. (By Mr. Tilbury) Well, there is no situation, Mr. Perkins, where there were obligations to be paid, corporate obligations—

Mr. Hilliard: I object to the leading question.

Q. (By Mr. Tilbury) —where there were corporate [336] obligations for sometime?

What was the source of the money the corporations operated with in order to pay their obligations? A. The corporation didn't have any money. I put money in.

Mr. Hilliard: I object to this, Your Honor, as not bearing on any issue in this case.

The Court: Well, I didn't know. He may continue.

A. (Continuing) When the corporations run out of money, I personally put money into it to keep it going.

Q. (By Mr. Tilbury) Now, was some of this money repaid to you in all instances or in some instances? A. Some of it might have been paid in some instances. We wound up with a large deficit to me.

Q. Where you made advances of this kind, did the corporations pay interest to you? A. I never charged any interest.

Mr. Hilliard: Your Honor, we object to the arrangement between he and these corporations.

The Court: What do you claim for them, Mr. Tilbury?

[337] Mr. Tilbury: Well, Your Honor, of course, it is our theory that the corporations are not properly in the case at all, but nevertheless—because it is our theory that the discrimination occurred against Clyde Perkins individually.

The Court: Well, what does that have—I assume that if the corporation borrowed money, it would pay interest, but I don't think that has anything to do with—

Mr. Tilbury: Well, Your Honor, I think Mr. Perkins said that he advanced money to the corporations for their obligations. It relates to his own participation, and, of course, it is only on the ultimate theory that if it is necessary to go into the corporation, that is still something that he had to stand back of, and, in fact, they were his alter ego and own agents.

The Court: Are you claiming that the money that he may have advanced to the corporation is an element of damage in the case that was lost by him?

Mr. Tilbury: I think it shows a loss.

The Court: Well, then, get to the specific amounts and dates and not just generalities about it. It doesn't help the jury to have that type of thing.

Mr. Tilbury: Well, Your Honor, I think the accountants are best able to give the specific amounts.

The Court: I think so too.

Mr. Tilbury: So I will reserve it for this time.

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[339] Q. (By Mr. Tilbury) Mr. Perkins, from time to time, I assume it was necessary to hire people that managed retail stations where you owned the land. In those instances, did you hire that individual or did someone else?

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The Witness: I personally hired all the help.

Q. (By Mr. Tilbury) Would that include every employee in the stations? A. No.

Q. All right. A. That would include the managers only.

Q. Did you receive permission from the corporations to hire these people? A. Never asked anybody permission.

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[340] Q. (By Mr. Tilbury) Would this have been true for a number of years, Mr. Perkins? A. Always has been that way.

Q. All right. A. Since I started business.

Q. With respect to situations where credit was requested by a potential customer who bought products that you obtained from—initially from the Standard Oil Company, who made the determination as to whether credit would or would not be extended?

• • • • •

The Witness: I passed on all the credit.

[341] Q. (By Mr. Tilbury) Did you receive permission from the corporations to pass upon such credit? A. I didn't ask permission from anybody.

Q. Was this also true for a number of years? A. All the time I was in business.

Q. Now, Mr. Perkins, if I might take you back to the period of time just before the signing of the 1956 agreement between yourself and the Standard Oil Company, did you, without relating the conversations or all of the circumstances, contact other potential companies with regard to obtaining petroleum products? A. I did.

Q. And did you contact the Signal Oil & Gas Company, among others? A. I did.

Q. Where did you contact them?

Mr. MacLaury: Well, Your Honor, I am going to object to this line of questioning. It is not material to any question of price differential in this case. The fact of the matter is he did sign the 1956 contract, and who he talked to before then has nothing to do with the issues here.

Mr. Tilbury: Your Honor, I can connect it up, and I can show price differential.

The Court: You went into that. He may answer.

Q. (By Mr. Tilbury) Mr. Perkins, where did you contact them? [342] A. In Los Angeles.

Q. Under what circumstances, without telling us the conversation? A. Well, the circumstances was that I was taken there by another party to see if I could make a connection for petroleum products.

Q. All right. Would you identify the individual who took you there? A. Mr. James Lewis.

Q. And who was he? A. He was the President of the Independent Refiners Association.

Q. Who did you meet with at the Signal Oil & Gas Company? A. Mr. Marsh.

Q. Would you identify him. A. Well, I only met the man once. It's hard for me to identify him, except in this way: Mr. Marsh had in the building that he had the offices in, it is a large building, many stories, and he had his office on the first floor or on the mezzanine floor. I believe I'd recognize him if I could see him, but he had a rather large nose and—well, I couldn't describe his physical attributes right at this minute.

Q. What was Mr. Marsh's first name? A. I don't know as I could remember his first name.

[343] Q. Do you recall his position with Signal Oil & Gas Company?

Mr. Hilliard: Your Honor, this witness has already—

The Witness: He was one of the executives.

Mr. Hilliard: Excuse me. There is a lack of knowledge here. His relationship with that company and what he speculates as to the position of the individual could be in no way binding on the defendant, and I object to the relevancy—

The Court: Well, we don't know whether it will be or not.

Mr. Tilbury: Mr. Perkins—

The Court: I have a representation of counsel that it will be tied in with the defendant, and with that representation, he may proceed.

• • • • •  
A. I just can't tell you his title just now, but he was one of the executives in the business.

Q. All right. Did you discuss the possibility of some sort of contract with the Signal Oil & Gas Company for petroleum products? A. Yes, I did.

Q. And was an offer extended of some kind to you? [344] Well, an offer—an offer was extended.

Q. What sort of offer was it?

Mr. Hilliard: We object to that, Your Honor. The offers he might have received from someone else would have no relation to the issue of his contract with Standard Oil.

Mr. Tilbury: This is an issue, I believe, Your Honor, that you ruled on previously on page 1709 of the prior transcript, and we were permitted to develop this information.

The Court: Yes. You may proceed.

Mr. Hilliard: Your Honor, may the record show clearly that any statement here would be hearsay as to this defendant and absolutely—

The Court: I understand that at this stage, of course, it would be, and under the state of the record in this case, but I have the representation that it will be tied up into the conduct of the defendant or someone.

Mr. Tilbury: Yes, sir.

Q. (By Mr. Tilbury) Mr. Perkins, can you compare, if you will, the offer which was made to you the Signal Oil & Gas Company with the Standard contract? A. The offer—

Mr. Hilliard: Excuse me. Your Honor, Standard's contract, at what time and with whom? This time and place, there is no specification—

The Court: It is highly important, and I understand [345] that.

Mr. Tilbury: I agree.

Q. (By Mr. Tilbury) I am now speaking of the standard contract which you had at the same time. [346] A. Well, prior to the signing of the 1956 contract.

Q. (By Mr. Tilbury) The same time you had the discussion with Signal Oil & Gas Company? A. I went to Los Angeles and contacted many oil companies and in that group was the Signal Gas & Oil or Oil & Gas.

Q. All right now, would you compare for us, please, the offer which was received by you from the Signal Oil & Gas Company with the contractual relationship that you had with Standard? A. They offered me a better price than I was getting from the Standard Oil Company.



Mr. Hilliard: I object Your Honor, and move to strike that; irrelevant, immaterial, incompetent, and it is hearsay.

The Court: May I have the answer, please.

(Whereupon the reporter read the previous answer.)

The Court: I will leave that in; as I understand it, you still represent this will be carried to the defendant.

Mr. Tilbury: Yes, sir, I will make the comparison.

The Court: Proceed.

Q. (By Mr. Tilbury) Mr. Perkins, to what extent was it better?

Mr. MacLaury: Your Honor, it seems to me he ought to connect it up before we go into the details.

The Court: I suppose that will develop in some of his [347] depositions, is that it?

Mr. Tilbury: Yes.

The Court: No, I won't interrupt this witness' testimony to go forward to the reading of the depositions. He may continue.

The Witness: I think it was about three-quarters of a cent better per gallon.

Mr. Hilliard: We move to strike the speculative answer, Your Honor. The witness either knows or he does not.

The Court: I don't know from the witness' statement when he uses the word, "I think," whether he is just making a supposition or if that is his expression of belief or what, and until he does tell us, I will strike it from the record and you are instructed to disregard it.

Q. (By Mr. Tilbury) What is your belief as to the matter? A. Well,—

Mr. Hilliard: (Interposing) I object to belief.

The Witness: I know exactly what it was.

Mr. Tilbury: Just a minute.

The Court: He says now that he is stating from memory. He may answer it.

The Witness: I know exactly what it was and I was trying to average it up between the two grades of gasoline. It was .75; that was the three-quarters of a cent on regular, and eight-tenths of a cent on ethyl.

[348] Q. (By Mr. Tilbury) By that you mean that this was—I am not trying to lead you, I am trying to shorten this up—that it was that much better than Standard's contract that you had at that time? A. Yes, sir.

Q. Now, why didn't you—by the way, do you know at that time from which source the Signal Oil & Gas Company was obtaining its products? A. Yes, sir.

Q. Which source? A. Standard Oil.

Q. Of California? A. Yes, sir.

Q. Now, did you have occasion to—I probably should ask you, why didn't you make a contract with them at that time?

Mr. MacLaury: Your Honor, I think this is completely irrelevant and immaterial as to why this person didn't make a contract with Signal Oil & Gas Company in 1956. We are talking here about a relationship between Standard Oil Company and this plaintiff.

The Court: Yes, if it is based upon a matter of business judgment of this witness, it doesn't help us any. If it was because of some statement or action of the defendant, it does help us. I don't know. He will have to answer and I will have to deal with it.

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[349] Q. Did you, Mr. Perkins, have occasion to discuss this conversation that you had with the Signal Oil & Gas Company, with any employee of the Standard Oil Company? A. Yes, I did.

Q. Under what circumstances? [350] A. I discussed it with Mr. Johnsen; I discussed it with Mr. Vesper before we signed the 1956 contract.

Q. Where did this discussion take place? A. In their offices in the Standard Oil Building.

Q. In San Francisco? A. Yes, sir.

Q. All right. Can you tell me what was said by the Standard Oil representatives—incidentally, now Mr. Johnsen, you mean August Johnsen and Vesper is Howard Vesper? A. That is right.

Mr. Hilliard: I object to that question on the various grounds and for the reasons mentioned yesterday so far as

any conversation with that employee of Standard. There has been no showing of authority to make the particular statement and no express or implied authority, and in addition, any conversation about an offer he received somewhere else would not have any bearing on any issue in this particular case.

The Court: It may or it may not. It will be overruled.

Q. (By Mr. Tilbury) Well, I am merely asking what was said by any representative of Standard at the time you held [351] this discussion that you have just mentioned? A. Well, we had a long discussion, a very lengthy one, lasted for some time, and I told them my situation and what I had learned, and they denied it, and I wanted them to increase my margin, and they said that they would not increase it because I was buying at identically the same price as the Signal Gas & Oil, and they would not be permitted to sell me gasoline lower than they sold to Signal Gas & Oil.

Mr. MacLaury: Your Honor, I move to strike that response. It is immaterial to any issue. It is irrelevant and secondly it is a statement of an employee of Standard to whom there has been no showing that he was authorized to make the statement. It is highly prejudicial. Your Honor.

Mr. Tilbury: If Your Honor wishes, I could read at this time the deposition to identify himself.

The Court: No, I will abide by the ruling. The motion will be denied.

Q. (By Mr. Tilbury) Mr. Perkins, did you have any subsequent discussions with any of the representatives of Standard with respect to the same thing? A. Yes, I did.

Q. Under what circumstances and where? A. Well— [352] Q. And when? A. I had a discussion in the fall, late fall of '56, with Mr. Hargens and Mr. Johnsen. Mr. Johnsen was President of the S.O. Company. I don't know what Mr. Hargens' title was. Mr. Hargens came to my hotel and picked my wife and I up and took us down to the

penninsula to Mr. Johnsen's residence. We spent the entire afternoon. We talked about many things about the oil business. That evening we went out to dinner. Mr. Hargens and Mr. Johnsen got into a controversy, and it was getting to be quite heated, and Mr. Johnsen said to Mr. Hargens—

Mr. MacLaury: Your Honor—

The Witness: Said in my presence—

Mr. MacLaury: Just a minute, please, Mr. Witness: Your Honor, I make the same objection. There is no demonstration here that Mr. Johnsen had any authority to make the statement about to be recounted and the witness himself said that he did not know what Mr. Hargens' position with the company was.

The Court: I understand this conversation was in the presence of Mr. Johnsen.

Mr. Tilbury: Yes, sir.

The Court: He may answer it.

The Witness: Mr. Johnsen said, they were arguing about the Regal coming to the Northwest or the Signal Gas & [353] Oil coming to the Northwest and Mr. Johnsen said to Mr. Hargens in my presence, he said, "You have the authority to do it and I want you to stop Regal from going to the Northwest because, if they do, they will wreck that market because they have got a better price than either Clyde or my other jobbers have up there, and if they come up there, they will do the same thing there they have done other places. They will wreck that market."

Mr. Hilliard: We move to strike that entire statement.

The Witness: That was the conversation.

The Court: The motion will be denied.

Q. (By Mr. Tilbury) Did they mention what other places they had in mind? A. Phoenix in particular.

Q. All right. Did you, as a result—anything else said other than that? A. Well, after the conversation was over, it kind of broke up in a row and Mr. Johnsen or Mr. Hargens and his wife, Ruth, took Mrs. Perkins and I back to the hotel in San Francisco and that was the end of that night.

Q. All right. As a result of that conversation, what did you do? A. I went to Phoenix.

Q. For what purpose? A. I made my own investigation and found out what Mr. [354] Johnsen said had been true.

Mr. Hilliard: Your Honor, we are getting completely beyond any area involved in this lawsuit. Phoenix would not have any bearing on any issue in this case.

Mr. Tilbury: Your Honor—

The Court: Members of the jury, the witness' statement to the effect that, having gone to Phoenix, he found out what Mr. Johnsen said was true is unresponsive to any question. It is a merely voluntary statement. It is his conclusion. It is stricken from the record and you must disregard it.

[355] Q. (By Mr. Tilbury) Did you have any subsequent discussion with the Standard people with respect to this? And if so the time and place and the circumstances? A. Well, Mr. Tilbury, that was the point of discussion continuously with them time after time, and I can't enumerate all of the dates, but during that year and the first part of '57 we were down there continuously trying to get relief and that was the real topic of conversation and the real subject we were talking about.

Q. Did you take this up with the general sales manager, Mr. Cuyler? A. I talked to Mr. Cuyler and I talked to Mr. Vesper, and I talked to Mr. Johnsen.

Q. What did Mr. Cuyler say to you? A. Well, Mr. Cuyler he sidestepped the matter because he said it was in Johnsen's department to handle it; one day Mr. Johnsen took Mr. Powell and Mr. Harris and Allen Perkins and myself and we went up to Mr. Vesper's office, and I talked to Mr. Vesper. We had a long conversation, and I told him that I insisted on getting the same price that the Signal got, and I wanted the same subsidy that the Signal Oil Company got.

Mr. MacLaury: Your Honor, I move to strike that last testimony. The only issue here is did in fact Standard



Oil charge a differential in price, and all this conversation as [356] to what this gentleman wanted and what he insisted on, and the wranglings, the negotiations, and quarrels have no probative effect here.

The Court: I permitted some of this testimony to go in to show inducement and the preliminary matters leading up to the '56 contract, as I understood this testimony was for.

Mr. Tilbury: Yes, I think most of it is.

The Court: Is that correct?

Mr. Tilbury: Yes, sir.

The Court: Now, what do you claim for this line of testimony right at the moment?

Mr. Tilbury: Well, I'm just trying to develop all of the conversations he might have had.

The Court: Well, we will be here a long time if you do that. I think that you have exhausted the area of preliminary negotiations in the contract. It is all branded and melted in—

Mr. Tilbury: All right, Your Honor.

The Court: —melted into the final contracts. I will conclude any further inquiry into that.

Mr. Tilbury: I won't pursue it.

Q. (By Mr. Tilbury) Did you at any subsequent time after concluding the 1956 have occasion to discuss the matter with Howard Cuyler or with any representative of Standard as to the price they charged the Signal Oil and Gas with the price you [357] were charged. We want to get in effect what the prices were.

The Court: I would take it this would go right to the meat of it. Well, of course, the prices charged are in the exhibits offered in the contract and of the amendments of the contract, those are the prices. Then he may also go into any dealings had with the officers of the company concerning this thing. I take it that is what he is getting into.

Mr. MacLaury: My motion is denied?

The Court: Rephrase the question.

Q. (By Mr. Tilbury) Mr. Perkins, did you have any subsequent discussions after the signing of the 1956 agreement with Mr. Howard Cuyler, the general sales manager with regard to prices charged Signal Oil and Gas Company as against the prices charged you? A. Yes, sir.

Q. Would you tell the time, place and circumstances?

A. I will give you the place. The place was in Standard Oil's office in Los Angeles—in San Francisco. It is as close as I can pinpoint it. It was in December of '50, of '56. I just can't pinpoint it. We wrote a letter and asked [358] them for a—

A. (Continuing) We wrote a letter and asked for an audience by them, and I believe it was in the last of '56, the last of '56.

Q. What was that? A. We went down there and we had a long discussion with Mr. Johnsen and we talked to Mr. Cuyler. He came in on the deal for a while; and then he took us to Mr. Vesper's office; and we told Mr. Vesper that we wanted to renegotiate our contract.

Mr. MacLaury: At this point I am going to interpose my objection to the substance of these conversations.

The Court: It will be overruled.

A. (Continuing) We wanted to renegotiate our contracts because I told him what we wanted. We wanted the same price as to Signal and we wanted the subsidies like they were paying the Signal stations.

Q. (By Mr. Tilbury) By "the Signal stations" now you are referring to which? [359] A. Signal Oil Company.

Q. A division of Standard? A. A division of Standard.

Q. All right. And what was the outcome of this discussion? A. First, they told us they did not have any subsidies, and Mr. Vesper—

Mr. MacLaury: I object to that. I object to the "they", and I would like to have it specified so that we can make our objections on the authority, Your Honor.

The Court: Yes, we have gotten into an area where it will be helpful to the jury if the witness will recount the substance of the conversations and designate the speakers.

A. (Continuing) Well, all of our remarks in that meeting were directed to Mr. Vesper, and he did the talking for the Standard Oil. He stated that they were not at that time—he said they had to give some subsidies, but they was discontinuing it, and they was not going to give any more subsidies to anybody. He said that our price was identically the same as Signal Gas and Oil. I remember one remark that I made which probably should not have made, but I will tell it.

Mr. MacLaury: Well,—

A. (Continuing) I said, Mr. Vesper.

Mr. MacLaury: Just a moment, Mr. Perkins. I will object to any further conversation between this witness [360] and Mr. Vesper unless—

The Court: He was asked to repeat the conversation. He may do so. You may answer.

A. (Continuing) I said, "Mr. Vesper, you either know that you are giving Signal a better price than you are giving us, or you don't know very much about the operation of your business."

Mr. MacLaury: I move to strike that. The question is as to whether or not some officers or some other person in Standard knew what the situation was or what they told this gentlemen the prices were has nothing to do with this law suit. The important matter is what were the prices paid and what were the prices offered. This doesn't go, Your Honor, to negotiations of the contract.

The Court: I don't want to analyse the effect of the evidence and the testimony. I think that is for the jury. I will not comment, and your objection will be overruled. Go ahead, Mr. Perkins.

Q. (By Mr. Tilbury) I think you can continue.

A. (Continuing) Well, this argument lasted all afternoon for a couple of hours, and we just finally gave up and come home.

Q. "We" is— A. When I say, "we", I mean Mr. Harris, Mr. Powell, and Allen Perkins and myself, the four of us.

[361] Q. By this time, which Mr. Harris do you have reference to? A. I am talking now about Mr. Gerry Harris, who was the son of Robert Harris who had taken over his part of the business.

Q. All right. Now, following this discussion with Mr. Vesper—

Mr. Hilliard: Your Honor, for a point of clarification, do I understand that this is a conversation that occurred in December of 1956 and the comparison of price for Signal Oil and Gas Company; the witness used the term "Signal" when he attributed this comparison, and I assume he was talking about Signal Oil and Gas. May I have that point clarified?

The Court: Can you answer Mr. Hilliard's query?

The Witness: The price of gasoline?

The Court: No. No, he is asking for the identity.

The Witness: Yes, I am making the identity. There are two identities to make, Your Honor.

The Court: Yes.

The Witness: The price of gasoline was with the Signal Oil and Gas, the subsidy was with Signal Oil.

Mr. Hilliard: The time was December of '57?

The Witness: Well, as near as I can remember. I could be off. It was after the '56 contract was signed, quite a bit. I think the letter is in the file to show the day we went down there.

[362] Mr. Hilliard: Let me just ask one more question: Was it sometime in the last part of 1956?

The Witness: Well, I testified that I thought it was in December. Well, I could be off on that, but there's records in there to show when we went down.

Q. (By Mr. Tilbury) Did you have any subsequent discussions other than these you have enumerated with any of the Standard officials with respect to the price being charged

Signal Oil and Gas as against the price being charged you?

A. Mr. Hilliard, that was sort of a bone of contention until the time that I left the Standard Oil Company with all of the officials of the Standard Oil Company, Mr. Johnsen, Mr. Burns and the rest of them.

Q. Were there any instances in which any of the Standard officials compared your price with the price of Signal Oil and Gas? A. I just recited that they did. They said our price was identically the same.

Q. All right. And were there any statements by any of the Standard officials at any subsequent time in which they stated that your price was either higher or lower than with the Signal Oil and Gas price? A. Not that I can recall just now.

Q. With respect to these subsidies of the Signal Oil [363] Company stations, were there discussions besides those you enumerated with respect to these with the Standard Oil officials? A. I can't remember all the conversations we had over subsidies. We tried awfully hard to get subsidies for our stations. We wanted the Signal Oil stations, the Signal Oil Company subsidies to our stations.

Q. Did any of the Standard officials admit that there was a subsidy program to the Signal Oil stations? A. They denied it for some time and then finally Mr. Beaton of this office admitted they were giving it.

Q. Who is Mr. Beaton? A. Mr. Beaton was the retail sales manager for the Portland area.

Mr. MacLaury: May we have specifically who denied this, Your Honor, instead of the word "they".

The Court: Mr. Beaton.

Q. (By Mr. Tilbury) Would you identify him? A. Mr. Beaton.

Q. Yes. A. Mr. Beaton was the retail sales manager of the Portland area.

Mr. Tilbury: I think Mr. Beaton was identified as the person who stated that such subsidies were given. I am



interested in the group of people that you designated as [364] "they", who denies it.

Mr. Hilliard: Your Honor, without response to that, we move to strike that reference to "who denies", and what existed as too indefinite and uncertain.

The Court: Yes. The witness is being asked at this stage instead of waiting until later to identify to the jury possibly who he means by "they".

The Witness: Well, I meant the Standard Oil officials. Now, if you want to know of some particular conversation, I would identify any particular one. The conversation that I had in Los Angeles—In San Francisco, I had the conversation with Mr. Johnsen; then we had the conversation with Mr. Vesper, who is the executive vice-president, and then we later had further conversations with Mr. Johnsen; and I called them. It is just the two there. Maybe I shouldn't have—

The Court: That is all right. That explains what we wanted.

Q. (By Mr. Tilbury) The gentlemen that you have now identified for us, did they first deny there was any subsidy at all? A. Mr. Johnsen first denied there was a subsidy of any kind that he knew of. Mr. Vesper said that they had given in some rare instances some subsidies, but they were going to be discontinued because it was very bad for the business and they was not going to get into a deal of subsidies.

[365] Q. Did they later either have these gentlemen or any of the gentlemen you have mentioned deviate from this statement to you with regard to subsidies? A. They never did deviate from it.

Mr. Hilliard: Your Honor, well, once again for the record, we move to strike the statements of the witness. The question here is whether somebody received a subsidy and whether he did not or any issue on it at all. It is not what somebody said about it on a given time and place. We move to strike it.

The Court: It will be overruled. It will be denied.

Q. (By Mr. Tilbury) Mr. Perkins, what is a subsidy exactly? A. A subsidy is when the price goes down, when the retail price drops down below or close to the tank wagon price or the price which the service station is buying gasoline for, and he no longer can from an economical standpoint can afford to operate, then the oil company guarantees him a certain margin which we call subsidizing or a subsidy.

Q. What is a tank wagon price? A. The tank wagon price is a price that has long been established as a criteria in the oil business as a price which the oil company posts. I know the Standard always posted it of which they would sell a service station or any legitimate commercial account in quantities of 400 gallons or more.

Q. How do you distinguish that from the retail price? [366] A. That price is lower than the retail price, about five cents.

Q. Well, does this vary from time to time? A. Well, it could vary. If the tank wagons stayed up and the retail price went down, then it would vary.

[367] Q. (By Mr. Tilbury) Were there times, Mr. Perkins, when this five cent differential between the tank wagon and the retail price would be something more or less than that figure? A. There were times during the period between '55 and '58 that the retail price was less than the posted tank wagon price.

Mr. Hilliard: Your Honor, on testimony on this, could we have the specification of the time and place, because it is going to vary considerably, as indicated.

The Court: Mr. Tilbury will develop that.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Can you give us some illustration where that was true where the tank wagon price and retail price were close together, if not identical? A. I can't tell you the exact time of days or months. It happened in

Roseburg in 1950—'56. It happened in Centralia [368] in '56, it happened in Albany and Corvallis territory in '56.

Mr. Hilliard: Your Honor, the witness has said "it happened", and I am not sure the question asked for specification—

The Court: It is bearing directly to the situation that he testified to as when the retail price was lower than the tank wagon.

Mr. Hilliard: Retail price lower than the tank wagon. That is what I—

The Court: That is correct.

The Witness: I would like to correct my statement. I'd say as low or lower.

Q. (By Mr. Tilbury) Now, under what circumstances did this take place? A. Well, the circumstances would be that the retail price would just continue to go down and the tank wagon price would be continuously—remain stationary.

Q. All right. Now, during the claim period, that is, '55 through '58, did the tank wagon price go down, the Standard Oil tank wagon price? A. I don't remember of it ever going down.

Q. All right. But the retail price did vary, I take it? A. It continued to go down.

Q. Now—

Mr. Hilliard: May we have a specification of where and [369] when on the "continued to go down", Your Honor?

The Court: Yes.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Can you specify it? A. Well, I would specify it here at home, because I was very familiar with it here in Portland. It started—

Mr. Hilliard: Excuse me, Your Honor. As to Portland retail, we would object to that, because this witness did not operate at retail—Mr. Perkins did not operate at retail in Portland.

The Court: It will be denied.

The Witness: In Portland in the fall of '56, the retail price dropped just almost overnight or within a week, or within a few days I'm going to say. I can't tell you the exact time. It dropped down in the neighborhood of four cents or almost—very close to the tank wagon price.

Q. (By Mr. Tilbury) When did this happen? A. That happened in the late fall of '56 when the Regal opened their first station at 39th.

Mr. Hilliard: Now, Your Honor, I object to this and any purported connection between a drop in the retail price and some specific station. That is not properly used as a point of time reference, and there is implication beyond that, and I think it is irrelevant and I think it is incompetent and I think it is prejudicial to try to make that contention.

[370] The Court: It will be overruled.

Q. (By Mr. Tilbury) Were you referring to the Regal station at 39th and someplace? You didn't identify it. A. 39th and Powell.

Q. All right. When did that open? A. That opened in the fall of '56.

Q. Was this the first Regal station in Portland? A. To my knowledge, it was.

Q. All right. There have been other Regal stations that have been opened subsequent to that time? A. Yes, sir.

Q. Do you know where the other stations might have been? A. They have one out on 122nd, they have one over here on—on Interstate, they have one here on Broadway and Weidler—

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Mr. Tilbury: That is what I was going to ask.

Q. (By Mr. Tilbury) Now, the one on 39th and Powell, you identified in the fall of '56? [371] A. That's right.

Q. Now, can you recall the next Regal station that opened in Portland? A. The next one that I noticed that opened in Portland was at Broadway and Weidler.

Q. All right. Where is that with reference to— A. Right on the Broadway Bridge.

Q. That would be on the Northeast side of Portland? A. Yes, right on our way home to Vancouver.

Q. What was the period of time between the opening of that station and the one on 39th and Powell? A. Well, I think one opened soon after the other one. I can't tell you how soon, but shortly afterwards.

Q. Then was there a third one which opened? A. Well, there were two more that opened. The next one that opened, or one—I don't know if it was the next one or not, but it was at 122nd Street.

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[377] Q. (By Mr. Tilbury) Mr. Perkins, over the years in your discussions with any of the Standard officials did any of them bring up the subject of Regal, if you would identify the time and place for us? A. Yes, they did.

Q. Will you tell us when and where? A. With my meeting, when I was to dinner with Mr. Johnsen and Mr. Hargens, they discussed Regal. In fact, that is the first time that I knew that Standard was furnishing the gas for Regal and they stated—

Mr. MacLaury: (Interposing) I object to that and move to strike the last remark. It was nonresponsive.

The Court: Members of the jury, disregard the witness' statement to the effect that was the first time he knew that Standard was supplying Regal; unresponsive and a conclusion in the sense of the word, that he knew. It is stricken from, the words, that is the first time he heard of such a thing.

Q. (By Mr. Tilbury) When and where did this discussion take place? A. Where did it take place?

Q. Yes, sir. A. In a restaurant down on the peninsula south of San Francisco.

Q. Is this the same one you related to us earlier? A. Yes, sir.



[378] Q. Now, what was said by either of these—well, let's take Mr. Johnsen. What was said by Mr. Johnsen at that discussion? A. Well, Mr. Johnsen and Mr. Hargens were arguing and Mr. Johnsen—

Mr. MacLaury: (Interposing) Just a moment, please. I object to the question. It calls for the same testimony that was given just before the recess and the same objections were made and will be made to this, and they have been ruled upon.

The Court: This, I don't believe he testified to the entire conversation. I think we are going to another phase. I will have to wait and see. At the moment it will be overruled.

Q. (By Mr. Tilbury) Don't relate anything you have gone over before. I am asking if anything came up about Regal specifically by Mr. Johnsen. A. Well, Mr. Johnsen said to Mr. Hargens, he said, "You can control this because you are selling the Signal Oil & Gas and they furnish, and they own Regal or furnish the gas for Regal," and Hargens said, "Yes, I know it, but" he said, "I can't control it."

Mr. Hilliard: We move to strike that testimony, Your Honor.

The Court: Overruled.

[379] Mr. Hilliard: Particularly in the case of ownership.

Q. (By Mr. Tilbury) Did you have any subsequent conversations with Mr. Cuyler with respect to the comparative price between your price and the price of Signal Oil & Gas Company? A. Yes.

Mr. Hilliard: This has already been covered; the price between him and Signal Oil & Gas has already been allowed over objection.

Q. (By Mr. Tilbury) I am not asking you to repeat anything you said before, Mr. Perkins. I am asking, if there were any other discussions at any other time, other than you have related to us with Mr. Cuyler, the General Sales Manager? A. In '57 I had a discussion with Mr. Cuyler.

Q. And where did this discussion take place? A. And the discussion took place in his office.

Q. Can you pinpoint the date? A. It was in the spring of '57.

Q. What was said? A. And he told me definitely they were getting a better price than we got.

Q. Who was this? A. Mr. Cuyler. And Mr. Cuyler said, "Why don't you go talk to Darwin Godfrey because he knows and should tell you all about it."

[380] Q. Now who was getting the better price? Did he identify who? A. Signal Oil & Gas was getting a better price than the Champion boys, which I was one of them.

Q. Did he specifically say Signal Oil & Gas? A. He did.

[381] (Whereupon counsel, Mr. Tilbury, read the questions on the deposition of Mr. Allen Lee Shepard and Mr. Bruce Hall read the answers, having taken the witness stand.)

#### "Direct Examination

By Mr. Tilbury:

[382] "Q. Would you state your name, please? A. Full name: Allen Lee Shepard.

Q. And your address, Mr. Shepard? A. 4609 Wortser Avenue, Sherman Oaks, California.

Q. And your occupation? A. My title in the marketing department is manager, subsidiary operations, at the present time.

[383] "How long have you been in that position? A. In the marketing department six years; with the present title probably a year and a half to two.

Q. Prior to that time what did you do? A. Prior to the marketing experience?

Q. Yes, sir. A. Accounting.

Q. From what period of time? A. Oh, from 1936 to '56.

Q. Did you from time to time have occasion to encounter records pertaining to dealings between Standard and Signal Oil & Gas Company? A. Yes, I did.

Q. Over what period of time? A. Oh, probably a ten-year period.

Q. And in what way would you get into these? A. I would say that my connection with the accounting operations, which involved transactions between Signal Oil & Gas Company and Standard, would be relative to invoices from them, bills of lading from Standard covering deliveries which in turn would back up the invoices, supervision of reconciliation of the accounts, things of that nature.

[385] "Q. Specifically what do you mean by that? A. Specifically, we were buying in various localities, and therefore our prices varied. We have to segregate the purchases by gallons purchased in the various areas, compute our cost of sales based on the prices charged in those areas.

Q. From what areas were products drawn from Standard? A. During this period we were buying most of our products from Standard from their refineries here in Southern California, Montebello and El Segundo. In the northern area we were lifting products from Standard at Richmond, and later on in this period we were—

Q. Is that Richmond Beach, Washington? A. No, this was Richmond, California.

Q. I see. A. We were also taking products from Standard at Richmond Beach, Washington. And later on in this period we were taking products from their terminal at Willbridge, Oregon.

Q. Do you know what periods you were drawing from Willbridge, Oregon, or Richmond Beach, Washington? A. I would say Willbridge started, oh, in the middle of 1956; and liftings from Richmond Beach, Washington would probably go back to the beginning of this period.

Q. And by that you mean '55? A. '55.

[386] "Q. What sort of products were you drawing from those locations? A. Gasoline, of course, in two grades, house brands and premium.

Q. How about lubricating oils, anything of that kind? A. I can't recall that we were buying any lubricating oils from Standard during this period.

Q. Heating oils, anything of that sort? A. No. Signal Oil & Gas Company as such I don't believe ever lifted any heavy oils from Standard terminals.

Q. Were there any products of any sort with the exception of regular and ethyl gas that you obtained from Standard? A. I honestly can't remember any other products. If we did lift anything, it was such a minor quantity that it escapes my memory.

. . . . .  
[398] "Q. And during this time were you obtaining regular and ethyl gasoline from any source? From, let's say, '55 through the latter part of '57, did you obtain any ethyl or regular gas from any source other than the Standard Oil Company? A. Yes, I believe we were buying from other companies in late '57, or early '58.

Q. To what extent, and what percentages were obtained from Standard and what percentage from outside sources roughly?"

Mr. Hilliard: We had an objection, Your Honor, and you permitted the witness to answer.

Mr. Tilbury: Go ahead.

(The reading of the testimony was resumed, as follows:)

"A. Well, this is just an estimate. In the latter part of '57, early part of '58, we could have purchased as much as twenty percent from other companies.

Q. During the earlier time, did you obtain virtually all products from Standard Oil of this type, that is, regular and ethyl gas? A. Yes, we did.

[399] "Q. Now,"—

Mr. Tilbury: Let's see. (Pause) All right, I will skip down to line 13 since there was the ruling there.

"Q. How about the Regal stations in Oregon? How did they obtain their products? A. The Regal stations in Oregon were supplied through our subsidiary, Western Hyway.

Q. How long has Western Hyway been a subsidiary of Signal Oil and Gas Company? A. I can recall the date very well, because I was up there at the time we opened it. It was July 1, 1950.

Q. When did you begin to sell to Regal? A. In this again, I will just have to rely on memory, but I believe it was in the middle of the year 1956.

Q. Would you have some records that would show when the initial sales were made to Regal?"

Mr. Hilliard: I pointed out: "By whom, Counsel?"

Mr. Tilbury: Then I said—pardon.

Mr. Hilliard: "By whom, Signal or Western Hyway?"

Mr. Tilbury: And I said in response: "I would have to include them both, I" guess. "A. Well, this I mentioned, the sales to Regal in California were direct sales from Signal Oil and Gas Company. The sales in Oregon were sales through Western Hyway, and those records would have to be developed [400] "through Western Hyway's invoices.

Q. Their headquarters are in Sacramento, are they? A. That's right.

Q. Who has charge of Western Hyway? Who is their chief executive officer? A. Their chief executive officer would be W. H. Nichell.

Q. Western Hyway is a wholly owned subsidiary, is that correct? A. At what time?

Q. Well, let's take from 1950 on, or whatever the period is. A. No, we had a sixty percent interest in Western Hyway at the inception.

Q. And when was the inception? 1950, is that the date? [401] "A. July 1, 1950.



Q. And subsequently has that been increased? A. Yes. We purchased the additional 40%—I'm trying to remember the date. Well, it has been within the last two years.

Q. Does your company have an interest in Regal Petroleum Company? A. Yes, we do.

Q. Is that approximately 75%? A. Yes, it is.

Q. And how long has Signal Oil and Gas owned 75% interest in Regal Petroleum Company?

[402] "A. I'm confusing Regal with Craig. Regal was considerably later than that, say more like 1954."

Q. Was the acquisition 75% initially, or was it something less than that or something more than that? A. As I recall, we initially—no, we purchased 75% at the outset.

Q. How about Regal stations as distinguished from Regal Petroleum Company? Is this also a subsidiary or an affiliated company of Signal Oil and Gas?"

Mr. Hilliard: Mr. Ottosen says: "Is that Regal Stations, Inc., did you say?"

Mr. Tilbury: "I think it is."

Mr. Hilliard: "All right."

Mr. Hall: "Regal Stations, Inc., is a separate subsidiary and has no direct relationship other than affiliation to Regal Petroleum Co."

[403] "Q. When you say subsidiary, you mean subsidiary of Signal Oil and Gas Company, is that correct? A. Yes, it is.

Q. And is that interest about 60%? A. It was 60% during this period.

Q. By "this period", you mean what dates, sir? A. Between '54 and '58.

Q. Do you know when Signal Oil and Gas acquired a 60% ownership interest in Regal stations? A. I can't recall exactly. I would say approximately 1954."

[404] Q. Was there a third company, at least at one time, bearing the name Regal in some way, Mr. Shepard, Regal Oil Company of Sacramento, or some such title? A. I believe that there were other corporations prior to the actual forming of Regal Stations, Inc., in which we transferred—

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 "Q. Was that about 60% interest again? A. There again, I can't be positive, but I would think, yes.

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 [405] Mr. Hall: "21-A is responsive to the question as to the checking of the date of the acquisition of the interest in Regal of Sacramento. Responsive to this question, we have checked available records and find that Signal had a 60% in Regal Petroleum Corp., of Sacramento, which company was in existence only a comparatively short time. In late 1956, that corporation was in effect merged into Regal Stations, Inc., by a share-for-share exchange of stock."

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 [406] "Q. Now, the sales that were made in Oregon by Signal Oil and Gas Company, were they made directly to Western Hyway Oil Company in all situations, or were they made to Regal Petroleum or one of these other companies? A. To the best of my knowledge, all the sales were made in Oregon were through Western Hyway Oil Company.

Q. Western Hyway in turn resold the products to Regal, did they? A. In Northern Oregon, yes.

Q. How about Southern Oregon? A. They were sold to stations operating under the name of Fortune.

Q. Now, who owned the Fortune stations? Was this a branch of Regal, or is it something else? A. No, these were not part of Regal. They were individually owned.

Q. Did Western Hyway sell directly to Fortune? A. Yes, they did.

Q. There was no intermediary in between? [407] "A. No.

Q. Were all the Fortune stations individually owned, or did the Signal Oil and Gas or Western Hyway or Regal have any interest in any of these stations? A. To the best of my knowledge, they had no interest in any of the Fortune stations.

. . . . .  
[408] "Q. I don't mean to imply something that is not true. All I am asking is to somehow distinguish the type of operation that Regal Petroleum did from the type of operation that Regal Stations did and Regal Petroleum Corporation of Sacramento. Did they occupy different types of operations, or were they in the same type, or what was the actual situation? A. I think their operations were very similar.

Q. In what respects? A. In that they marketed through company-operated Regal stations.

Q. Is there a difference in the area that they occupied? A. Yes.

Q. In what respect? A. Regal Petroleum Company operated stations in the East [409] "Bay area, in San Jose, in the Peninsula area.

Q. These are parts of California, I assume? A. Pardon me?

Q. They are in California that you mentioned? A. Yes, all in California. Whereas Regal Stations, Inc. operated in the Sacramento-San Joaquin Valley area, and San Francisco area.

Q. How about Regal Petroleum Corporation of Sacramento? A. My memory is very hazy on Regal of Sacramento. This, as I recall, was a corporation that was in existence prior to Regal Stations, Inc. Thereagain, I would have to check the legal record to see the actual movement from one corporation to the other.

Q. Has that company disappeared as a separate company? Has it been absorbed? A. Yes.

Q. Consolidated in some way? A. Yes.

Q. And with which company is it now consolidated? A. Regal Stations, Inc.

Q. So at the present time you just have the two corporations in existence, Regal Petroleum and Regal Stations, Inc.? A. Operating in California.

Q. Are there others? A. Regal Stations Co., operating in Oregon.

[410] "Q. I see. Now, that is a different one from Regal Stations, Inc.? A. Yes.

Q. All right, let me ask you about that one. Now, what degree of ownership does Signal Oil and Gas have in Regal Stations Co.? A. At what time?

Q. Well, at various times."

Mr. Hall: "During this period I would think that Regal Stations, Inc. owned a 60% interest in Regal Stations Co."

"Q. This is an affiliate company then of Regal Stations, [411] "Incorporated; correct? A. A subsidiary.

Q. A subsidiary? Regal Stations Company is a subsidiary, 60% subsidiary, of Regal Stations, Inc.; right? A. Right.

Q. Now, has this been true throughout, or has the percentages varied? A. To the best of my knowledge the 60% interest held during this period we are discussing.

Q. Now, is this the company that is also operating in Washington? A. No, it is not. Well, I will qualify that. We have one station in Washington.

Q. Longview? A. Yes.

Q. And under which name is that operated? A. Regal Stations Co.

[412] "Q. All right. Transferred or sold. I don't want to mislead anyone. I am just trying to get the picture clear here. To Regal Stations Inc., and Regal Stations, Inc., in turn transferred or sold it in some fashion to Regal Stations Company; is this correct? A. No.

Q. All right, would you explain it. A. The sale was made from Signal Oil and Gas Company to Western Hyway, who in turn sold it to Regal Stations Co.

Q. They did not go through Regal Stations, Inc.? A. No.

Q. Is Regal Stations Co. a corporation? A. Yes.

Q. Was there an actual sale from Western Hyway to Regal Stations Co.? A. Yes.

Q. In the case of products that ultimately found their way into Regal Stations Co., as they existed in Oregon, were [413] "these products obtained initially from some point in the State of Oregon? A. Yes.

[414] Mr. Tilbury: "I was asking whether Western Hyway obtained its products directly from Signal Oil and Gas or whether it obtained them from some other source."

[415] "A. During this period I would say that Western Hyway bought most of their products from Signal Oil & Gas.

Q. There were some exceptions then, I take it? A. Yes.

Q. From which other companies would Western Highway have acquired products?"

Mr. Hilliard: We had an objection on hearsay. Well, ~~strike that.~~

Mr. Hall: Shall I go ahead, Mr. Hilliard?

Mr. Hilliard: Yes.

"A. This again would only be hearsay on my part, because I can't remember and don't have direct knowledge of their purchases, but there were other independent companies that supplied them quantity supplies.

Q. When you say most,—how much is most? Would it be ninety per cent. for example, that it drew from Signal Oil & Gas Company? A. There again, it varied with the years. In the early part of this period I would say they bought most of it, practically all of it, from Signal Oil & Gas Company. In the latter part—I would hazard a guess as to the ratio.



Q. Would it be more than half? A. On a guess I would say approximately a half.

Q. Can you tell me which independent oil companies you had reference to, or some of them? [416] "A. This could be verified by checking Western Hyway's records, but I believe they did buy some products from Hancock and some products from Caminol.

Q. Does Signal Oil & Gas have any ownership interest in Caminol? A. No. At least not to my knowledge.

Q. Were the products which Signal Oil & Gas obtained, which ultimately found their way into the Regal stations, drawn from Standard Oil of California? A. Inasmuch as Western Hyway supplied some Regal stations with products during the latter part of this period, some of the products came from other companies.

Q. Well, my question was, those products which came through the chain from Western Hyway, Western Hyway in turn acquired from Signal Oil & Gas Company, and which ultimately found their way into Regal stations, were such products of that nature that were supplied from; initially let's say, Signal Oil & Gas, in turn obtained by Signal Oil & Gas from Standard Oil Company of California? A. Yes.

Q. Was that a one hundred per cent acquisition, or did Signal Oil & Gas in Oregon and Washington, we'll say, obtain products from any other source?

Mr. Hilliard: Mr. Ottoson, do you understand the question?

[417] "A. Yes. There again, we are talking about periods. I would say most of the products during this period were obtained from Standard Oil Company. However, in the latter part of the period it is possible we did lift some other products, some products from other companies, into Oregon.

Q. Which companies? A. I believe it was Union Oil Company.

Q. Pardon? A. Union Oil Company.

Q. And when would that have started? A. I would say in the early part of '58.

Q. So at least from '55 to '57 is it a fair statement that in both Oregon and Washington Signal Oil & Gas obtained its ethyl and regular gas exclusively from Standard Oil Company of California? A. Give or take a little on the date, I would say yes.

Q. How would you qualify the date? A. It's possible we might have purchased some products from Union in the latter part of '57.

Q. Would it be fairly small as compared with the volume [418] "that you drew from Standard?"

The Witness: Yes.

Q. Does Signal Oil & Gas own the Regal stations themselves, that is, the land, the property, the station, the physical assets, directly, or is this owned by Regal Stations Co.? A. There may be one or two units that Signal owns directly but I would say that ninety-five per cent of them are owned by the corporation.

Q. And which corporations? A. By the various corporations.

Q. The Regal Stations Company and the other Regal stations? A. Yes.

Q. Now, are the employees who man these stations company employees of any of the corporations? A. Yes, they are company employees.

[419] "Q. And which company would pay their salary? Would it be Regal Stations Co. in the case of stations in Oregon? A. That is right.

Q. Do any of them pay for their products on the consignment basis or do they operate on a commission type arrangement, or is it strictly a salary basis? A. During this period it was all strictly salary.

[451]

**Clifford Leslie Curry**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

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Mr. Hall: That is page 1224.

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**Direct Examination**

**By Mr. Hall:**

Q. Mr. Curry, where do you live? A. 1334 Northeast 77th, Portland.

Q. How long have you lived in Portland? A. I have lived in Portland since 1947.

Q. What is your occupation? A. I am a service station proprietor.

Q. And how long have you been one? A. Since the year 1947.

Q. For what company? A. I was with Standard Oil in 1947, '48, and to July of '49 with Mobil subsequently.

Q. All of the time? During the claim period here, which I will define as '55 to '57, you were a Mobil dealer here, is that correct? A. No, during this period that this testimony covered I was a Chevron dealer.

Q. You were a Chevron dealer, all right.

[452] Where was your location, your station location in '55 to '57? A. I was on the corner of Southeast 92nd and Powell Boulevard.

Mr. Hall: I am wondering if we can take Plaintiff's Exhibit No. 252 and have the witness show where he was.

(Whereupon the bailiff brought the map forward and placed it on the easel.)

Q. (By Mr. Hall) Mr. Curry, could you take this red pencil and mark where you were? Incidentally, Mr. Curry, you looked at this map earlier this morning to identify

your location? A. Yes, I did. Right here. (Indicating)

Q. Will you mark "D-2" on there again. A. (Indicating)

Q. Thank you very much.

(Whereupon the witness resumed the witness chair.)

Q. During this period when you were a Chevron dealer, referring to 1955 to 1957, were you the recipient of any sort of a subsidy plan? A. Yes, I was.

[453]. (By Mr. Hall) Did you receive such a subsidy plan or did you receive one? A. Yes, I did.

Q. Did it have any name? A. Yes, it was called the Chicago Plan.

Q. And was that in effect during the period that you were a Chevron dealer? A. Yes, it was.

Q. Would you explain how this plan worked, to the jury? A. Yes, on each drop in the retail market of one cent the dealer was supported in his loss of margin, the oil company absorbed seventy-five per cent of the loss, and the dealer absorbed twenty-five per cent of the loss.

Q. How far down were you supported in price on that loss? A. We were told that the base could run down to as low as four and a half cents, I believe.

Q. I see. Do you have any records with you with regard to this period of time? [454] A. Yes, I do.

Q. Where are they? A. Right here.

Q. Do those have any identification mark on them? A. Yes, I have my day book that we maintained on a day-to-day basis and I have the invoices for the gasoline purchased, and I also have a mimeographed form that was given to us by Standard Oil, that is entitled "Dealer Transmittal Letter Temporary Retail Price Allowance."

Q. Does that show the giving of such a subsidy? A. Yes, it does.

Q. I see. By the way, Mr. Curry, is there any mark on those papers, such as Plaintiff's 107, a court marking? A. No, they have not been so identified. There is no marking on them.

Q. There is no marking on those?

Mr. Hall: May we ask that they be marked as Plaintiff's Exhibit 107.

[459] Q. Now, Mr. Curry, with regard to the Regal Service Stations, were there any in your general area in Portland during the claim period of which I have referred; that would be 1955 to 1957? A. Yes, we had a Regal station on the corner of Southeast 39th and Powell that was constructed and operated during the time I was a Chevron dealer at 92nd and Powell.

Q. Did this Regal station handle the same customers, clientele that you did? A. Well, the flow of traffic up Powell Boulevard [460] naturally had to pass that station before it arrived at my station.

[462] Q. (By Mr. Hall) Did you say you were a Chevron dealer in 1957, through '57, this period we are talking about? A. I started to be a Chevron dealer June 14th of 1957.

Q. June 14th of 1957; do you know the prices at the Regal Station at 39th and Powell? A. Well, they were advertising their commodities for two cents less than I was selling mine.

[463] Q. Now, besides the two cents less, were they giving anything else away; that is not a very good way of putting it. Was there anything else offered besides the two cent inducement? A. Oh, they advertised they had service station stamps to go with it.

Q. All right. Do you know yourself how this service stamp program worked? A. Yes.

Q. How? A. From experience. You buy the gasoline there, why, they give you a stamp the same as S&H green stamps are given to you on the same percentage basis. They have got a stamp for every dime's worth of gasoline you bought.

[464] Q. (By Mr. Hall) Would you advise us as to what factors were involved in the decrease of your business



which you testified? A. I think it could be best illustrated in this way.

Q. I don't want to interrupt you, but just specifically answer the question for me? A. Well, I would have to tell you exactly how many gallons I was pumping and what—

The Court: That is what you should tell.

A. (Continuing) When I took the station over in June, it was pumping 8,000 gallons per month. We increased that gallonage to a peak of August of '57 to 15,000 gallons per month; and in the fall of '57 this is when all the prices started coming up and people recognized the depressed market and our gallonage fell and it stayed down and it never came back up.

[467] Q. You mentioned these price signs, I believe, at the Regal Stations. Will you describe those price signs? A. Well, they are large signs, about six feet high and about three feet wide, and they have a large numeral on them advertising the price of their lowest grade gasoline.

Q. I see. These figures, I assume then, can be changed from day to day? A. Yes.

#### Cross-Examination

[470] By Mr. Hilliard:

Q. I understand you had some price signs then that came [471] out in the fall of '58? Is that what—or fall of '57 did you say? A. Yes.

Q. When was that, the fall of '57? A. Price signs started—they began to use them universally in the industry in the fall of '57. In fact, the numerals were furnished by Standard Oil.

Q. By "in the industry", you mean Richfield, Shell, yourself— A. The oil companies furnished them.

Q. However, you came in in June of '57; is that right? A. That's right.

Q. And your station hit its peak gallonage, as I understand it, in August of '58; is that right? A. That's right. I believe it's August.

Q. And when I say "peak", I mean your highest point of gallonage. A. Yes, yes.

. . . . .

[472] Recross-Examination

By Mr. Hilliard:

Q. You started, as I understood your testimony, 8,000 gallons per month, and when you did peak, it was at a monthly gallonage of 14,000? A. 14 or 15. It's up in there.

. . . . .

[473] George Carney DeFord

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Mr. Hall: 1260, Your Honor and counsel.

Direct Examination

By Mr. Hall:

Q. Where do you live, Mr. DeFord? A. I live at 10700 S. W. 42nd Avenue, Portland 19.

Q. What is your occupation? A. I'm a service station operator.

Q. What was your occupation during the period of 1955 to 1957? A. Service station operator.

Q. For what company? A. Standard of California.

Q. Were you a Chevron dealer for them, or were you a regular employee? A. Chevron dealer.

Q. Chevron dealer. Now, where was your station location in this period of 1955 to 1957? A. 9025 S. W. Barbur Boulevard.

. . . . .

[474] Q. Was there any subsidy program affecting your station during this claim period of 1955 to 1957? A. Yes.

Mr. Hilliard: May we have the same objection, Your Honor, as to the other witnesses.

The Court: I apologize to counsel. My attention was diverted.

Mr. Hilliard: It goes into the area of subsidy to his operation, which we would say is irrelevant and immaterial on the same basis as before.

The Court: It would be the same. It will be overruled.

Q. Would you describe the details of this program that you had. A. Well, it was called—in the trade it was known as the Chicago Plan. When the margin to the dealer dropped below the six cents margin above tank wagon, the Standard Oil Company took 75% of the loss below that point.

[475] Q. Was there any floor to your share of the loss? A. As I recall, it was four and a half cents was the floor.

Q. I see. Beyond that then, the company would take the entire loss? A. True.

Q. Do you recall whether you actually received assistance during this period of time under the subsidy program? A. Yes, I did.

Q. Do you have any records here with you? A. No, I don't.

Q. When would this subsidy program go into effect? A. At any time that the price of gasoline dropped below a dealer margin of six cents gross.

Q. I see. May I ask you this: Were there any so-called price wars during the period of time from 1955 through '57 that you recall? A. Were there price wars?

Q. Yes. A. Yes.

Q. Do you recall, from your own observations, any changes in the customer's buying habits when these price wars would occur?

[477] A. Any time there was a price disturbance, there were certain classes of customers that you didn't see in the station any more, and as the situation became more pronounced, then there were increasingly other classes of customers that you didn't see any more until the situation cleared itself up.

Q. (By Mr. Hall) Now, what is the difference between major and minor on brands? A. Well, the major oil companies are nationwide organizations, nationwide advertising, nationwide credit cards, and the minors are more localized outfits that encompass smaller areas.

Q. Do you recall applying this test—any difference between majors and minors in 1955? A. Well, in the industry it was more or less an understood thing there was a two cents differential between majors and minors.

Q. Standard Oil Company of California considered a major brand? A. Oh, yes.

Q. Did you receive any other allowances from Standard Oil Company of California besides the subsidy program that you [478] have described? A. Besides the gasoline supports?

Q. Other supports, yes. A. Yes.

Q. What were they? A. We received maintenance and restroom allowance of a fourth of a cent a gallon, which was used for station maintenance, restroom allowance, janitorial supplies, such as that. The station, we received a cooperative advertising allowance of one-tenth of a cent a gallon up to fifty per cent of our advertising bill.

Q. I see. Who painted your stations? A. Standard Oil Company.

[482] Redirect Examination

By Mr. Hall:

Q. Counsel has mentioned to you lower prices going back as far even as 1954, depressed price periods. Can you compare the severity of these depressed price periods from 1954 on to the most recent time you testified to? A. Since I have been there, the price depressions in this area commenced about the time I went into business and have progressively gotten worse up to right now.

Recross-Examination

By Mr. Hilliard:

Q. You started in 1953 at this location? [483] A. Yes.

Q. And your remembrance, would you know who started the depressed prices in 1953 or '54 in your area? A. The Shell Station next door to me posted a price sign and took a two cent drop the night before I opened up for business.

Q. So you opened in the face of a two cent drop? A. Yes, sir.

Q. All right. And, as you say, there has been some progression since 1953 in the severity of price disturbance?

A. The length of each price disturbance, the depth of it, each succeeding one seems to be a little more severe.

• • • • •

[484] Charles Arthur VanLandingham

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Hall:

Q. Where do you live, Mr. VanLandingham? A. 2530 North Portland Boulevard.

Q. And during the claim period that you have heard us referring to in the courtroom, that is, 1955 to 1957, did you operate a service station? A. Yes, I did.

Q. Where was that located? A. 4616 North Interstate.

Q. For what company? A. Shell Oil Company.

• • • • •

[486] Q. All right. What, incidentally, is tank wagon price? Define that for us, briefly. A. Well, there is no such thing as tank wagon price. It can be one price one day and change in twenty-four hours.

Q. Well, I appreciate that the price level itself will change, but what is it? A. Normally it should be about six cents below your retail price.

Q. It is the price which you purchase then below your retail price? A. True.

Q. From your supplier? A. Yes.

Q. Thank you. Mr. VanLandingham, with reference to Regal Stations, do you recall when the first Regal Station



came into the Portland area? A. I don't recall the year that they came in, but they came in in this period we are speaking of, from '55 to '57.

Q. I might ask you how close to you was the nearest Regal? A. During this period?

Q. Yes. A. The closest one to me, I believe, was Broadway and [487] Wheeler, approximately two miles.

[488] Q. Do you know when the first one came in and where? A. The first came in on 39th and Powell.

Q. Pardon me. A. I believe this came in in approximately '55 or '56.

Q. All right. Now, were there price wars in early '55? A. Very small ones. We did have a price war then, yes. The length of time was very short.

[489] Were there price wars in '56? A. Yes.

Q. Now, you have testified we have a period of time on this 39th and Powell station, you said; what was the time you think they came in? A. '55 or early '56.

Q. All right.

Q. (By Mr. Hall) Will you compare the price wars that you have described in '55 through '56? A. They extended much longer.

Q. By "they", which ones do you mean? A. The price wars.

Q. I see. Now, you are referring—I didn't get that clear; let me say, "they" you are referring to the '56 price wars which extended longer or the '55? A. The '56-'57 price wars extended longer than the ones preceding that. Of course they were.

[491] Q. (By Mr. Hall) All right, did you observe of your own knowledge any other, any new factors or added factors in the '56 price wars from those of the 1955 price wars? A. Would you state that again for me?

Q. Yes. Did you observe any, any new practices in the industry in connection with the 1956 price wars which were

absent in the 1955 wars? A. We went through a period about that time regarding the price signs. At one time we were told that this had to be put on the pump, very small due to a city ordinance. This, I understand went into court and it was ruled that they couldn't, could put up large price signs which we have.

Mr. Hilliard: Well, Your Honor—

The Court: He is explaining a factor as he understands it. He may continue.

A. (Continuing) - At this time we got into the big signs that you see today. Now, we have them made out of metal because we know they are going to last. We made them out of paper before.

Q. When you say "time" in reference of time, can you pinpoint that time for us? A. Yes, this comes within this period very well that the big signs came out as we see them today.

Mr. Hilliard: When we say "this period," Your Honor, [492] may we have a little more specification?

The Witness: '57 and '55, sir.

Q. (By Mr. Hall) Where did these signs which you have described originally, these numbered price signs come from? A. We received them from the company.

Q. Did any other companies use these signs? A. Yes, they did.

Q. Do you know who started this practice of using the signs?

Mr. Hilliard: We object, Your Honor, being able to say an area besides the court where some particular individual started using the sign.

The Court: Well, we will assume the witness has to tell us of his own personal observation.

A. (Continuing) Yes, we started these big signs as we know of them today.

Q. Yes. A. Well, I wouldn't want to answer that because I never made a study to see who was the first one to put it on the streets.

Q. (By Mr. Hall) Did Regal have this type of sign? A. Yes, they did.

Q. Did you observe the Regal stations that you have just described to us, 39th and Powell and Broadway and Wheeler (Weidler) during this period of time? [493] A. I would say I observed them. I went by to see their operation many times, yes. This was a new type of operation of a size new to the City of Portland.

Q. What was new about it? A. Well, here we had completely no service work. This is strictly a retail outlet for the price of gasoline. When I refer to service work, I am speaking of maintenance, repair and tire work. They had their stamps which was redeemable. You redeemed them at the station. They had premiums which was redeemable by these stamps. Actually, it was a new type of operation as far as a service station was concerned here in Portland. It was strictly a gas and nothing else performed there.

Q. Did you observe their advertising programs? A. Yes.

Q. Will you describe them? A. I could stand to be corrected. I'm not sure of this. Around their stations I think they have a sign similar to what we would refer to or recognize as the Foster Kleiser signs here in Portland, completely around the stations here. They advertised. They also advertised they had a major brand gasoline. I could stand to be corrected, but I think there was a car involved at one time.

[494] Q. I see. Do you recall in 1955 what the spread was between major and minor brands? A. In '55?

Q. Yes. A. Two cents.

Q. (By Mr. Hall) Can you recall the difference between [495] the Regal prices and your prices at retail when they opened up? A. Yes, they opened below us.

Q. How much below, do you recall? A. Two cents.

Q. Did you have a clientele from the Vancouver, Washington area at your station? A. Yes, I did.

Q. Did you observe—did it fluctuate at any time?

A. The whole station would vary. To say that a certain amount of Vancouver people varied, this would be hard to say. I could give you approximately the amount of Vancouver business that I have, though.

[496] Q. What was that, approximately? A. It would run 50 per cent or better.

[497] Cross-Examination

By Mr. Hilliard:

Q. Would you glance through that, if you would like, Mr. VanLandingham.

The Court: It will be received.

(Whereupon Defendant's Exhibit 1612-A, Portland [498] City Ordinance No. 103987, was received in evidence.)

(Witness examines)

Q. (By Mr. Hilliard) Have you had a chance to look through it? A. Yes, I have.

Q. This is the City Ordinance, I assume, to which you refer? A. Yes.

Mr. Hilliard: Your Honor, I would like to read a portion of this to the jury.

The Court: You may.

Mr. Hilliard: This is Exhibit 1612-A, Ordinance No. 103987, and captioned: "An Ordinance Amending Article 6, Detailed Sign Regulations, of Ordinance Number 76571, Sign Code, by Adding Thereto Section 15-625 and 15-626 Regulating Signs Applicable to the Selling of Gasoline for Use in Motor Vehicles.

"The City of Portland does ordain as follows: Section 1. The council finds that there exists a practice among those individuals and corporations merchandising gasoline products for the use in motor vehicles of erecting movable signs and placing them at various locations on the premises and adjacent to sidewalk areas; the council further finds

that the quality of such signs and the placement thereof has been distracting to drivers of motor vehicles and subject to poor quality and [499] workmanship and misrepresentation in the eye-catching appeal; the Council further finds that it is desirable to regulate and place certain limitations upon erection and maintenance of such signs; now, therefore, Article 6, Detailed Sign Regulations, of Ordinance No. 76571, the Sign Code, is hereby amended by adding thereto two sections to be numbered, entitled, and to read as follows:" And then the actual section on the signs. This was passed by the Council on May 24, 1956, Mayor of the City of Portland and the Auditor of the city.

Q. (By Mr. Hilliard) Then you referred to the problem of price signs and the City Ordinance having been passed, and this is the one that was passed at that time? A. Yes.

[500] Q. Yes. Just let me, so you will know what I am talking about, turn to page 1281: "Have there been instances, to your own knowledge, in your own business when the retail price had approached or would be very close to the tank wagon level?" Answer: "Up to '58 you said?" Question: "From 1955 to 1958." Answer: "1958. I would say in 1958 it crowded pretty close. It is progressively worse. It has been in the preceding years from that." So is that the proper statement of your— A. In '50—to clarify this up as much as I can, I was in business in '53. In '53, to give you a comparison, we might have had three months out of the year, the price war two months. Say the same thing progressed in '54, '55, '56, '57. We would now be going into the area of where we're living with this a majority of the time rather than a minority of the time.



[504]

Charles Franklin Andrews

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

[505] Direct Examination

By Mr. Hall:

Q. Where do you live, Mr. Andrews? A. 6406 Northeast 8th Avenue.

Q. What is your occupation? A. Service station manager.

Q. What company is that that you work for? A. Texaco.

Q. All right now, during this claim period you heard us talking about, 1955 to 1957, did you operate a station then?

A. Yes, I did.

Q. Whereabouts was that? A. North Interstate and Lombard.

Q. Was that also a Texaco at that time? A. Yes.

[506] Q. All right. Now, did you observe this Regal Station at 39th and Powell when it first came in? A. Yes.

Q. Could you advise us what you observed about it?

First of all, let me take it in chronology and pinpoint it a bit. How did their price level compare with yours?

Mr. Hilliard: At what point, Your Honor? May we have a specification of time in any comparison of price?

Q. (By Mr. Hall) When did you say this 39th and Powell opened up? A. It was in the fall of '56.

Q. Okay. A. If my memory is right.

Q. All right. A. You want to know what they were doing? When they [507] opened up, they were about two cents under the major stations.

Q. All right. What else did you observe about those Regal Stations and their operations compared to yours?

A. It was a new type of operation.

Q. In what way? A. Strictly gas stations, and used premiums to entice business.

Q. What kind of premiums did they use? A. They had their own stamp and they redeemed them at the stations, just about anything you wanted. They had grass seed and water buckets and stepladders and garbage cans.

Q. Relating strictly to gasoline sales, did you observe their signs? A. Yes, they had billboard signs.

Q. Do you recall what was on those signs? A. They advertised major brand gasoline. And, "We honor all major oil company credit cards."

[510] Q. (By Mr. Hall) Yes, I think you said when they first opened up that they were two cents below your price. A. Yes.

Q. During this claim period and after they opened up, of course, did it ever drop below two cents below your price? A. Why, yes, but we went right down with them. We stayed within two cents of them.

[511] Q. Did you follow them or did you go identically at the same time? A. They moved first and we followed.

Q. All right. Prior to Regal coming in, did anyone put up large signs, that you recall? A. Yes.

Q. All right. Do you recall the major-minor price differential in 1955, the spread? A. Two cents.

Q. Were there any price wars in 1955? A. Yes.

Q. Were there any price wars in 1956? A. Yes.

Q. Were there any price wars in 1957? A. Yes.

Q. Were there any differences between these price wars in these years? A. They were small wars.

Q. In which, in all years? A. They would last a very short time. The dealers could straighten them out in their own areas.

Q. Was this during all of the period of time? A. Yes, until Regal moved in and then we have been in a price war ever since.

Q. What was your answer? [512] A. I said until Regal moved in, at that period; it seems like that since that period I can't recall of any period that the prices

went back to the normal dealer margin that we had prior to Regal. It has been a depressed condition ever since.

[515]

**Robert Paul Baunach**

called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

**By Mr. Hall:**

Q. State your full name, sir? A. Robert Paul Baunach?

Q. Where do you live, Mr. Baunach? A. 1701 Northeast 152nd Place.

Q. All right, and during this same period we are referring to in court, 1955 through 1957, did you operate a service station? A. Yes, I did. Approximately April of '55 I took over a station at 39th and Sandy, a Chevron.

Q. A Chevron station, you said? A. Chevron station.

Q. Would you come down to the board here and use D-3 to locate your station for us? A. Approximately here (so marked).

Q. All right. Thank you. By the way, will you please while you are here put in the location of the nearest Regal station during that period of time, '55 to '57? [516] A. One opened first on 39th and Powell. One opened on Broadway and Weidler.

Q. Put X's there. A. (So marked)

Q. Did you have any subsidy program during that period of time? A. Yes, I had what is know as "the Chicago plan." The oil companies supported us 75 per cent of the loss.

Mr. MacLaury: What is your next question?

Q. (By Mr. Hall) Will you describe the economic plan for us?

Mr. MacLaury: If you will wait just a moment, please. Your Honor, the defendant objects to any testimony on the retail level on the grounds that it has no proper part in this case.

**The Court: Overruled.**

**Q. (By Mr. Hall)** Go ahead and describe your plan?

**A.** The oil companies supported us 75 per cent of our loss.

**Q.** Was there any floor on your last loss? **A.** Four and a half cents a gallon.

**Q.** And by that is meant the oil company took the entire loss below that point? **A.** That is correct.

**Q.** Did you receive the benefits of that plan at any time [517] during '55 and '57? **A.** For quite a while, yes.

**Q.** Now, I don't know if you testified as to this; when did this first Regal station that you marked on the map come in at 39th and Powell?

• • • • •  
**A.** Regal started the big blast in '56 on their price signs, give aways, premiums, new stamps. Being new stations, naturally everyone was concerned. Naturally it affected my business.

**Q.** Did you say Regal stations?

**Mr. Hilliard:** I move to strike the conclusions and answers as nonresponsive to the question.

**The Court:** The witness's conclusion to the effect that naturally it affected my business is his conclusion about it and is stricken from the record. Disregard.

**Q. (By Mr. Hall)** What was the regular price when this 39th and Powell station opened in comparison to yours?

**A.** They were generally two cents a gallon under us and [518] generally on Friday evenings they would come out with a lower price, large price signs, which we do not get support until Monday or Tuesday of the next week.

**Q.** Now, you say that they were two cents below and they would come out with these price signs on Friday evening; clarify this? **A.** They would come out even below the two cents.

**Q.** All right. That is what I was trying to find out. So, they were more than two cents below Friday evenings? **A.** That's correct, yes.

**Q.** How far did they drop below you? **A.** Generally a penny at a time. It would be three cents.



Q. I see. Now, in 1955 what was the normal spread between major and minor? A. Two cents.

Q. With regard to their signs, their gasoline advertising signs only, do you recall those signs from your personal observation? A. Yes, I do.

Q. What did they say? A. Would you rephrase that?

Q. Yes, with regard 'only now' to gasoline advertising signs— A. Yes.

Q. —What do they say? [519] A. A. Main brand gasolines in large numerals on big signs.

### Cross-Examination

By Mr. Hilliard:

[522] Q. Well, then, why—what is your purpose in suggesting here that the price signs didn't come until Regal did? A. Regal had big new stations, and they had large signs. It was a new type of merchandising gasoline in the Portland area.

Q. Well— A. Which I noticed much more than any other smaller stations that were displaying large signs.

Q. Now, nevertheless, you are now, knowing of this ordinance and the date of it, know that price signs were of a sufficient problem, and that is the large sign prior to May of 1956 to result in the passage of a city ordinance as you know of that fact? A. Yes, I did.

[524] Your Honor, at this time perhaps we could finish the reading of the Signal Oil & Gas officer.

The Court: You may proceed with that. That was Mr. Shepard's deposition?

Mr. Hall: Yes, Your Honor.

[529] \* \* \* "In the case of the Point Wells acquisition by Signal Oil and Gas from Standard, where did the products go during the period in question?

[530] A. Signal Oil and Gas Company has three customers in that area.



Q. Who are they? A. Harris Petroleum Company.

Q. Is that B. F. Harris? A. Yes, Rainier Oil and Gas Company and Friend Distributing Company.

Q. Did Signal Oil and Gas have any degree of ownership in any of those companies? A. None at all.

Q. Did they continue to be supplied by Signal Oil and Gas during the period in question? A. To the best of my knowledge, yes.

[535] Q. Now, how were sales made by Signal Oil and Gas Company to the B. F. Harris Petroleum Company? On what basis? Did they have a written contract, for example? A. No, we did not.

[536] "Q. Was it just on a spot order type basis, or how was it— A. The marketing department developed a rack price at the Terminal, and deliveries were made on that basis.

Q. Would you define what is meant by a 'rack price'? A. I would say a rack price would mean the price charged to a distributor by a supplier at f.o.b. the Terminal.

Q. In the State of Washington did Signal Oil and Gas Company maintain some sort of bulk terminal facilities of its own? A. No, we did not.

Q. So, in the case of sales that were made by Signal Oil and Gas to B. F. Harris, would the mechanics have been, let's say in Washington, from the Richmond Beach point, it was then acquired via common carrier or something, or by Harris themselves, directly from that point rather than passing through some storage facility of Signal Oil and Gas Company? A. That's true.

Q. And would this also be true of Rainier and Friend Distributing Company? A. That's true.

Q. Did you maintain any storage terminals or facilities in the State of Oregon? A. No.

[537] A. This would only be a quoted price by Signal Oil and Gas Company to a customer, f.o.b. that point.

Q. Did you sell to Harris, Rainier, and Friend at the rack price? Was that the criterion? A. Yes. At no time was it delivered.

Q. They were responsible for picking it up from, in this case, from Standard's terminal? A. That's right.

Q. And paying their own transportation charges and the like. Did you give them any kind of advertising allowance, or rebates, or anything of that sort, or would it be whatever the rack price was that would control? A. That's true.

[538] "Q. The latter, right? A. That's right. No allowance—I mean, no advertising, no consideration.

Q. And in the case of all three companies there was no written contract, but it was an oral understanding? A. Right.

Q. And did that continue from the year, let's say, 1955 to 1958 on the same basis? A. To the best of my knowledge, yes.

[541] "Q. Would you have records that would show the rack price during this period in question? A. Our invoices would show the price to our distributor.

"Q. Getting back to this Harris, Rainier, and Friend at the moment, could you give me some sort of relationship, in cents or however other way you can describe it, between the amount that Signal Oil and Gas paid Standard for the products and the amount that you resold it to Harris, Rainier, and Friend for? Can that be related in terms of cents, or is there any way that one can go from one to the other? A. Well, I think our records would probably disclose the billing prices we made to these customers, and this could be compared with our cost from Standard.

Q. That would be the only way? A. Yes.

[544] Q. Were there any sales which your company made in Oregon or Washington directed to consumer accounts? A. None that I know of.

Q. In other words, all of the products that you obtained were ultimately sold either to Western Highway, or the Regal chain, or the three distributors that you have mentioned? A. That is true."

Mr. Hilliard: Mr. Ottoson states, "May I add, and see if the witness agrees, as to the States of Washington and Oregon solely."

Mr. Hall: "Yes, I assumed that this included just the States of Oregon and Washington."

[549] The Court: Cross examination?

Mr. Hilliard: Yes, I asked a few questions of Mr. Shepard in the deposition.

Q. One additional point also, Mr. Shepard. In connection with the ownership of properties, I didn't understand whether then during the period involved you indicated Signal Oil and Gas actually owned any Regal properties in Oregon. A. No, there was no ownership of any Regal property in Oregon by Signal Oil and Gas Company during any of this period.

[553]

**Ray Williams**

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

#### **Direct Examination**

**By Mr. Bonyhadi:**

Q. Mr. Williams, where do you live? [554] A. Centralia, Washington.

Q. And would you tell us were you in the gas business in '55 through '57? A. Yes.

Q. What was your position in that business in '55 through '57? A. I was a commercial distributor for the Signal Oil Company.

Q. Is that the Signal Oil Company, a division of Standard of California? A. Yes.

Q. And where were you located in those years? A. Centralia, Lewis County.

Q. In the State of Washington? A. Yes.

Q. Do you still do business with the Signal Oil Division of Standard? A. Yes.

[555] Q. All right. Well, let me rephrase it to satisfy everyone. Do you recall whether in the years 1955 and 1956 from time to time the posted retail price of gasoline in the area in which you acted as distributor for Signal Oil Company division of Standard Oil of California, the defendant here, came close to or fell below the tank wagon [556] price? A. At different intervals it was on both sides of the tank wagon.

Q. In other words, your answer is from time to time it did go close or fall below the tank wagon price? A. Yes, it went above also.

Q. At that time, what was your discount or commission off tank wagon price from Signal Oil Company per gallon? A. Do you mean my contract?

Q. Right. A. Or do you mean what was my—

Q. Well, I mean what was the discount off of tank wagon price; what was the margin to which you were entitled from Signal Oil Company off tank wagon price; was it one cent, two cents, five cents, three and a half cents, what was it during that period of time? A. My, my contract read one way was—

Q. All right, go ahead, answer your own way. A. During the price situation of course it was a different view. My contract was three and a quarter off tank wagon.

Q. Three and a quarter off tank wagon. Now, during 1955 and 1956 and '57, was it always three and a quarter or do you know whether it could have been more at times. A. Sometime, I don't know just when, I got another quarter of a cent which remained three and a half. I don't [557] know when it was.

Q. It was three and a quarter? A. I don't know whether it was during that time. It was just during the 1957 time or '56.

Q. It was three and a quarter; it might have been three and a half sometime during the period? A. That's right.

Q. Now, during the year 1955 and 1956, did you receive any subsidy from Signal Oil Company, division of Standard Oil Company? A. During the price condition, I—

Q. Right. A. Received help, yes.

Q. Now, from time to time, how much was that help in tenths of cents per gallon, if you recall? A. It ranged, oh, from a cent for one short period of time to seven and a half.

Q. It ranged from a cent, is that your testimony from one cent to seven and a half cents per gallon; is that depending on the market conditions at the time? A. Yes.

[558] Q. But you did receive these subsidies during 1955 and 1956? A. At different intervals, yes.

Q. During those two years. Did you confirm that also at the time you found you did get no subsidies during '57? A. Yes.

Q. Do you recall during this '55-'57 period whether in your area of operation there were any Champion stations that sold Champion brand of gas? A. Yes, there was.

Q. Now, you mentioned that you did get subsidies from [559] time to time during 1955 and '56. Was that by reason of price disturbances in your area? A. Yes.

[561] Cross Examination

By Mr. MacLaury:

[562] Q. (By Mr. MacLaury) Now, Mr. Williams, I direct your attention to exhibit 1453-X-1. That is the one dated March 29, 1955, relating to Station No. 431-2. Is that before you? A. Yes.

Q. What is that document, Mr. Williams? A. It's a request for a temporary price adjustment.



Q. And the request is directed to who? A. Mr. A. C. Berg.

Q. Who is Mr. A. C. Berg? A. He's in the home office of Signal Oil Company.

Q. I see. And it is signed by A. D. Burnham? A. Yes, sir.

Q. And Mr. Burnham is connected with the Signal Oil Company? A. At that time, yes.

Q. Where did Mr. Burnham obtain the information, if you know, that is shown on Exhibit 1453-X-1? A. I really don't recall. It's possible that I supplied the information.

Q. Was it your function and custom to supply information to Mr. Burnham regarding the pricing situation in the Centralia area during the 1955-56 period? A. I did.

[563] Q. Now, look at 1453-X-2. A. Would that be the second page?

Q. That is the second page. I don't believe yours are yet marked -2. That refers to Station 431-2. Was that a station which you supplied? A. Yes, sir.

Q. And it was located at 1002 S. Gold Street, Centralia? A. That's right.

[564] Q. (By Mr. MacLaury) Now, is it your testimony then that the third page, dated September 29, 1955, shows the correct amount of assistance extended to the dealer in Station 431-2 during the week September 19, 1955? A. I'm not positive, but I think its three and a half cents, I think I added a cent to that out of my—

Q. Well, I am talking about the amount extended by the Signal Oil Company? A. Oh, yes. This is it, right.

Q. And with respect to the amount of assistance shown on 1453-X-4 for the week October 28, 1955, would your testimony be the same, that that shows the amount of assistance extended to your dealer in Station 431-2 for that period? A. To the best of my knowledge, yes.

Q. Would your testimony be the same with respect to 1453-X-5? A. Yes.

[565] Q. (By Mr. MacLaury) Turning your attention to the next page, dash 6. A. Would that be November 30th?

Q. Dated November 30th, 1955. A. (Witness nods head.)

Q. And may the record show the witness is nodding his head. 1453X-7, dated September 19th, 1956, does that show the correct amount of assistance extended to the same dealer? A. To the best of my knowledge, all of these are.

Q. And dash 8, dated September 21, '56, does that show the amount of assistance extended by Signal Oil Company to your dealer in Station 431-2? A. Yes.

[566] Q. (By Mr. MacLaury) Mr. Williams, with respect to the dealer in Station 431-2, did you pass on to the dealer any subsidy or price assistance as shown in 1453X to the dealer? A. Yes.

[568] Q. (By Mr. MacLaury) Now, Mr. Williams, would you direct your attention to Exhibit 1453Z, and they are page 1 through 6, and I will ask you with respect to the first page, are you familiar with Station No. 431-6? A. Yes, sir.

Q. Is that a station in Centralia? A. That is right.

Q. And is it a station which you have leased to a dealer? A. Yes.

Q. And is it a station which through the years, 1955, 1956, and 1957, you supplied? A. Yes, sir.

Q. And is that a station to which you have transferred during this period, this particular time, certain price assistance forwarded to you by Signal Oil Company? A. Yes.

Q. Now, turning your attention directly to page 1 or 1453Z-1, which is dated August 24th, 1953, does that document correctly reflect the amount of price assistance extended to your dealer during the week August 24th of '55? A. Yes.

Q. And would your testimony be the same with respect to page 2, dated October 28th, '55? [569] A. Yes.

Q. Would your testimony be the same with respect to the week of October 28th, 1955, as the date that is shown on page 3 of Exhibit 1453Z? A. Yes.

Q. And would your testimony be the same with respect to page 4 in regard to the week November 30th, 1955, and with respect to the assistance figures shown on page 4? A. Yes.

Q. Would your testimony be the same with respect to 5, does that show the correct amount of assistance extended to your dealer during the week September 19th, 1956? A. Yes.

Q. And 1453Z-6, does that correctly show the assistance, price assistance extended to your dealer for the week September 21, 1956? A. Yes.

[570] Redirect Examination

By Mr. Bonyhadi:

[572] Q. Did the subsidy have anything to do with the three and a quarter cents discount you testified you received—it might have been three and a half cents, sometime during that period; did it have anything to do with three and a quarter cent discount that you received from Signal Oil Company, Division of Standard Oil, off the tank wagon price? A. No.

[573] Earl D. Vonada

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn, to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Bonyhadi:

Q. Mr. Vonada, where do you live? A. Centralia, Washington.

Q. Could you tell the jury and the court what you did during the years of 1955 through 1957? A. I owned and operated a Shell service station.

Q. Whereabouts? A. On Highway 99 across from the Champion Fleet Service.

Q. Is that outside of Centralia? A. That is outside the city limits, yes.

Q. Was it across the street from a Champion? A. Champion Fleet Service.

Q. That was a gas station? A. Yes.

Q. Could you tell us whether during the years of 1955, '56, and '57 whether during those years you bought gasoline from time to time from suppliers or distributors other than Shell? A. Yes.

[576] Q. (By Mr. Bonyhadi) Mr. Vonada, did you buy any gasoline during the years 1955, '56, and '57 from Signal Oil Company, division of Standard? A. Yes, I did.

Q. Was the price charged to you for this Signal Oil Company product less than that charged by Shell at the same [577] time in '55, '56, or '57?

Mr. Hilliard: This is the point of my objection, Your Honor. That is the price he can buy gasoline from Shell compared to a price he can buy it from Signal Oil Company.

The Court: It depends on the price and for what purpose he bought it.

Mr. Hilliard: That's right.

Q. (By Mr. Bonyhadi) Now, do you recall, Mr. Vonada, those times at which you obtained gasoline from Signal Oil Company, did you post a price sign at those times? A. Why, yes, I did.

[578] Q. (By Mr. Bonyhadi) Did you post a price sign when you obtained gas from Signal Oil? A. Yes, that is the reason I bought it there because I could buy it a little cheaper than I did from Shell.

Mr. Hilliard: I move that, Your Honor, be stricken as incompetent. It has no bearing on any issue in this case. That is just exactly what your Honor's ruling was a moment before.

The Court: Yes, and the testimony stops right there. It means nothing to us members of the jury. But, if it continues on and the price that he had to pay the Shell,

it would be tied in with the amount that was paid by Perkins, then it becomes relevant; but until then, it doesn't.

Q. (By Mr. Bonyhadi) You testified your station was across from a Champion station, was that right? A. Yes, that was my competition, my main competition.

Q. At those times which you testified to, the price now, did you sell it at a lower price per gallon than the Champion station across the street? A. That was my idea of buying it somewhere else so that I could.

Q. So the answer was "yes," you were selling it? A. Yes.

Q. Do you recall whether you took some business away [579] from the Champion station in those times? A. Well, there is no question about it.

Mr. Hilliard: Excuse me, Your Honor. I object, Your Honor. The time and the place.

The Court: Well, he just was asking if you recalled an event. He may or may not recall it. If he recalls it, he may tell us about it. If he tells us about it, then you may make your objection.

Q. (By Mr. Bonyhadi) I am not sure you answered this question. I asked did you recall the times at which you posted a price sign that you did take business away from the Champion station across the street; do you recall that during '55 or '57—

Mr. Hilliard: I object, Your Honor. It is a conclusion of the witness and it goes for incompetent testimony.

The Court: Members of the jury, it has been objected to, and I have to deal with it. The question assumes that he took some business away. That is an assumption which destroys him after the question. He meant this witness may be interrogated. If he had any customers, tell us who they were then we can find out if he knows whether or not they would be or would have been a customer of the other side. That is the impact that is raised by, when a question assumes something rather than asking a direct question. So, I have to deal with it. The objection will be sustained.



[580] Q. (By Mr. Bonyhadi) During the period of 1955, '56, '57, Mr. Vonada, are all those items which you had a price sign at this station, did you have some customers that you could identify as having previously been customers of the Champion?

A. Well, I have been there twenty-two years, and a lot of people I don't know. I don't know their names. I know when I see them in their car. I know when they go across the street and when they come over here to me, and that is what I say, I did get some business from him at a lower price.

[583] Cross-Examination

By Mr. Hilliard:

Q. Is it true that in the years we are talking about at your location, you paid probably one cent a gallon more for your gasoline from Shell than did the Shell dealers downtown in Centralia? A. Those were key stations down there, and they—

Q. Well, would you just answer— [584] A. They were selling gas a cent a gallon cheaper than I was.

Q. Were they buying at a cent a gallon cheaper than you were? A. Well, that I couldn't say for sure.

Q. Well, that is your thought or impression, isn't it? That is what you believe, isn't it? A. Well, evidently, yes. Of course, they would own stations, and they would reimburse them in certain respects, such as on their light bills, if they kept open twenty-four hours, why, they would pay their light bill on them in order to keep them going.

Q. And you followed a market of—practice of meeting any competition, did you not? A. Either that or below.

Q. That was, in other words, your method? A. If I could, yes. If I couldn't, I would try to purchase them somewhere else.

[586]

**Ervin A. Helgeson**

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

### Direct Examination

By Mr. Bonyhadi:

Q. Mr. Helgeson, where do you live? A. Centralia, Washington.

Q. How long have you lived there? A. Since 1930.

Q. Could you tell us what you did during the years 1955, '56 and '57? A. I operated R. and H. Champion Fleet Service.

Q. Where was that located? A. One mile north of Centralia.

### [591] Cross-Examination

By Mr. Hilliard:

Q. Thank you. Now, in connection with your business, in May—first of all, let me ask you this, did your volume of petroleum products, that is gasoline, the volume of your gasoline sales hit a peak in the year 1955 in excess of 400,000 gallons, that is 434,568, in that area? A. Yes, sir.

Q. That was '55 was your highest year marketing gasoline? A. That is right.

Q. Now, is it not true that in May of 1956 there was a change in the highway that passed in front of your station at Centralia? A. That is right.

Q. And resulted in what we call the freeway or throughway being completed through that area? A. That is right.

[593] Q. (By Mr. Hilliard) Then after the highway changed in 1956, in May, could you tell us what happened in terms of your gallonage in the marketing of gasoline at your station? A. That fall business started declining.

Q. Was this actually heavy or how would you describe the drop in numbers of vehicles passing before your station? A. Well, there was a terrific decrease.

Q. You were still a distributor of Perkins at the time of the sale to Westway, were you not? A. Yes.

[594] Q. The Perkins Oil Company of Washington? A. Yes.

Q. And had you felt the effect of this decline in traffic right up to that time? A. Yes.

• • • • •

[603] Carl F. Leithoff

was thereupon produced as a witness in behalf of the plaintiff; and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Bonyhadi:

Q. Where do you live, Mr. Leithoff? A. In Portland.

Q. And how long have you lived in Portland? A. Since May of 1955.

Q. And what is your occupation? A. Well, I am retired now. My occupation prior to that was sales manager for Westway Petroleum Company.

Q. Is that a subsidiary? A. It is a subsidiary of the Union Oil Company of California.

Q. How long did you work for Union Oil Company or Westway? A. I have worked for Westway since May 16th, 1955, when we first came to Portland for that company.

Q. And before then? A. Before then I was hired by the Union Oil Company in 1931.

Q. What did you do during the years of '55 through '57 [604] with Westway? A. May 16th, '55, until through '57, I was the state manager for the State of Oregon, that marketing area.

Q. Did that marketing area during those three years include only the State of Oregon or part of Washington? A. No, it included Washington as far north as Kelso and Longview.

Q. During those years were you acquainted with the marketing conditions in the gasoline field? A. In it. Yes.

Q. Would you tell us when you came here in '55 at the beginning of this period whether there was a differential in price between majors and minors? A. Yes, there was.

Q. Would you tell us what that difference was?

Mr. MacLaury: We are speaking now of the tank truck level or retail level?

Q. (By Mr. Bonyhadi) From the retail level? A. Yes, the retail price in this marketing area, there was a differential from two cents or more difference between minors and majors.

Q. Could you define what majors and minors are in this field? A. Well, a major oil company is a company that is nationally advertised. A secondary or a minor company [605] could be one that sells rebranded gasoline. It is an independent oil company. It would be an individual that owns a service station or a small oil company.

Q. Do you recall the entry of Regal Stations into this area of Portland?

Mr. MacLaury: Now, just a moment, Your Honor. Your Honor, I will object to the evidence, to any evidence with respect to these Regal Stations on the same grounds as I told the Court this morning before the morning session. I will also object on retail level on the grounds that the plaintiff was not a retail marketing agent in Portland, and on the second ground he was not in a retail market anywhere affected by the Portland market.

The Court: It will be overruled.

Q. (By Mr. Bonyhadi) You may answer the question about the Regal Oil Company.

A. Yes, I remember when they came.

Q. Correct. A. I think it was in, what, October of 1956.

Q. Were there any particular—anything particularly significant that was introduced by Regal to the Portland, Oregon, market? A. I think Regal Oil Company introduced a different method or an outstanding method of marketing in that they built their first station at 39th and Powell and they [606] advertised giving away a Cad, a

new Cadillac, I think, every month with merchandise and some additional gimmicks and displayed a price sign on the curb.

• • • • •

Q. (By Mr. Bonyhadi) Do you recall whether the prices of the Regal Stations at that time when they entered Portland, when the 39th and Powell station opened, do you recall whether they were lower than the price then charged by the Standard stations or Chevron stations in the City of [607] Portland?

• • • • •

The Witness: The Regal stations, they had one station at that time, that is the 39th and Powell, and in that zone they were, yes, lower.

Q. (By Mr. Bonyhadi) Do you recall the magnitude of—how much lower? A. No, specifically I don't recall that.

Q. Do you recall the price disturbance following the entry of the Regal station in Portland and was there one?

A. In that zone area, yes, there was.

Q. Can you tell us any result of that price disturbance and what happened as a result of it? A. Well, when they entered the market, they were naturally out to get all the business they could and establish a new station, and they did a good job of it.

• • • • •

[608] Q. (By Mr. Bonyhadi) Under what brand did you sell your gas to the Westway stations? A. Golden Eagle is the brand name.

Q. Did the Regal competition in October, '56, have any effect on your retail price? A. Yes, they did after they were in business for a while.

Q. How? A. Well, we had at that time—at that time I believe we had two service stations marketing in that zone, in that area. So, through our surveys, why, it was necessary to lower our price retailwise and that brought about a situation whereby we lost some business and had to do something to meet competition.

• • • • •



[609] Cross-Examination

By Mr. MacLaury:

[612] Q. And would it be your—is it your testimony that after the Regal station was opened, that there were other major brand stations and some minor brand stations in that zone that met the Regal price? A. They were all affected, yes.

Q. Would it also be your testimony that Westway stations were compelled to move their price down in order to meet the prices of some of these—in competition with some of these other stations? A. That's true.

Q. Now, Mr. Leithoff, I believe you testified in the last trial that it was customary for Westway to sell the Golden Eagle brand at two cents below the prevailing price for the Union Oil Company's own— A. Retail price, that's right.

Q. That is correct. And the Golden Eagle brand gasoline was of the same quality as the regular Union gasoline, was it? A. No, it was not.

Q. The Golden Eagle was an inferior quality— A. That's right.

[627]

**Wilbur R. Thompson**

was called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

By Mr. Hall:

Your Honor, Mr. Thompson is the witness who was under subpoena yesterday, and there was some confusion as to his arrival time.

The Court: Very well.

Q. Where do you live, Mr. Thompson? A. Roseburg, Oregon.

Q. And how long have you lived in Roseburg? A. Oh, since 1934.

Q. Have you operated a service station at any time there? A. I—I have operated different stations for 24 years.

Q. All right. We have in this lawsuit what we call the claimed period which was 1955 through 1957; referring to that time, did you operate a service station during that time in Roseburg? A. I operated one at Washington and Stevens, Roseburg, Oregon.

Q. What kind of a station was that? A. Signal. Signal Oil and Gas.

Q. Signal Oil and Gas. Now, let me get that straightened [628] up with you because we have two different names that are similar; was this the Signal Oil division of Standard Oil of California? A. They changed to that.

Q. They changed to that? A. They changed to that when it was bought out.

Q. When it was bought out by Standard? A. Yes.

Q. Now, during this period of time that we have been referring to, were there any price disturbances in the Roseburg area?

Q. (By Mr. Hall) During that period of time, were [629] you given any subsidy by the Signal Oil? A. I was.

[630] Q. (By Mr. Hall) What was the largest amount of your subsidy during that period of time? A. I think it was just under seven cents.

[631] Cross Examination

By Mr. Hilliard:

[632] Q. When did you receive the subsidy that you described? A. It was better than two weeks after—after it started. It could have been as much as a month.

Q. Well, now, this is May of 1956 that it started, you said? A. Yes.

[633] Q. Then it would have been by June or sometime in June of 1956 that you received the subsidy. For how long did that continue? A. Well, of course, that subsidy increased as the gas went down in price, and the latest date—if you want the latest date that I can remember, it was just after the turn of the year. It would be in January.

Q. In January of 1957? A. Right.

Q. Then was it constant during that period that you received a subsidy or was it just off and on? A. It was constant once the gas war started.

[644]

**George James Mathis**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Hall:

Q. Mr. Mathis, where do you live? A. Vancouver, Washington.

Q. And what is your occupation? A. I work for a service station.

Q. What kind of work did you do prior to that time? A. In the logging truck business.

[645] Q. All right. How many trucks did you have? A. One.

Q. Did you use the Champion stations in the Vancouver area? A. I used the Champion station out on Evergreen Highway in Hazelde.

[646] Q. (By Mr. Hall) When did you commence trading with the Regal stations? A. It was in the—if I remember right, it was in December.

Q. Of '56? A. Yes.

. . . . .

Q. All right. How often did you trade at Regal? A. Every day I filled up.

Q. You filled up there every day? A. Every trip into Portland.

. . . . .

[647] Q. How big are those tanks on your truck? A. Two fifty-gallon tanks.

Q. All right. Now, after you started buying at Regal, to what extent did you trade at the Champion station north of Vancouver you described? A. None.

Q. None? A. None.

Q. What occasioned you to transfer to the Regal stations? A. I liked to get my gas quite a lot cheaper than I could there.

Q. Do you recall how much cheaper? A. Oh, I think I saved about five dollars a fill.

Q. Do you recall any of the advertising at the Regal stations? A. No, I don't. All I was interested in was the price of gas.

. . . . .

#### Cross-Examination

By Mr. Hilliard:

Q. Mr. Mathis, you testified here at the last trial? A. I did, sir.

Q. And at that time, I believe you testified the Regal station at which you traded, Broadway and Weidler, you first observed there in March of 1956, was that your [648] testimony before? A. Oh, I bought gas there in 1956 and before that.

Q. And it was your testimony then that you were positive you bought it at that location from a Regal station in March of '56, is that right? A. I bought gas there in '56.

Q. In March? A. Yes, sir.

Q. And although I suggested to you then and now that you were wrong about that, nevertheless, your testimony was that you were positive you bought gas? A. I bought their gas there.

Q. At that time at the Regal station at that location? A. I don't know if it was a Regal station or not. I said I didn't remember if it was a Regal station, but I bought gas off of that corner.

Q. Oh, I see. What station was it? A. I don't even remember what station it was.

[650] Q. But some unidentified station in March of '56 at [651] Broadway and Weidler would give you how much better price? A. They gave me another cent below the price they had posted.

Q. What was their posted price compared to the Champion stations? A. It was the same as his was, but they gave me another cent and I will tell you, sir, how I found it out. I ran out of gas and had to pull in and fill up. They pulled up and gave me an extra cent off and I started trading there and the new station came in and I kept trading there because it was less, a lot less.

Q. Well, you can't tell me the name of that station you traded at as of March of 1956? A. No, sir.

Q. Whatever it was, it drew you away from the Champion [652] station in Vancouver and you didn't go back there? A. No.

Q. When you say "no," mean yes, that is what happened, it drew you away from the Champion station and you didn't go back there to buy gas, is that right? A. That is right.



## [655] Redirect Examination

By Mr. Hall:

Q. This station that you refer to is this new station that came in at this location; would you clarify that in my mind, was this the Regal station you testified to?

Mr. Hilliard: That is a leading question, Your Honor. Now, this person could not identify the station that was there in March.

The Court: That wasn't the basis of the question. I will leave the question in.

Q. (By Mr. Hall) Will you answer the question? A. Yes, it is a new station. It was a Regal station.

Q. I'm not talking about March when you first started. I am talking about this new station that you referred to? A. Yes.

. . . . .

[656] Q. Now, I believe you testified that when the new station came in you got a much lower price? A. That's right, sir.

Q. Will you compare that much lower price, as you call it, to the one that you were getting at this station in March? A. Well, they offered me them stamps and stuff, which I wasn't interested in. All I was interested in was the price, and they gave me an extra two cents a gallon off of that.

Q. That was an extra two cents off? A. Off of the two cents they had already given.

Q. I see. That made a total of four? A. Yes.

. . . . .

## [657] Recross Examination

By Mr. Hilliard:

Q. You are talking about two cents and two cents; what is the first two cents? A. The first two cents was lower than the Champion stations in Vancouver. The other two cents they asked me if I wanted the stamps or any give-

away stuff, and I said I wasn't interested in that. They gave me two cents more off of my gas and made it four cents.

. . . . .

[678]

**Howard Lester Buller**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Hall:**

Q. Where do you live, Mr. Buller? A. Vancouver.

Q. How long have you lived over there? A. Since 1948.

Q. Referring particularly to the years of 1955, '56, and '57, did you live in Vancouver at that time? A. Yes, I resided with my folks.

Q. What was your job situation starting in '55? A. I worked for the S. P. & S. Railway.

Q. Whereabouts? A. In '55 I worked in Vancouver.

. . . . .

[679] Q. Did you buy gasoline from the Champion station in Vancouver in 1955?

. . . . .

The Witness: Yes, I bought there from the time I got my driver's license. That is the only place I can remember that I bought gas.

Q. All right. Do you recall the Regal service stations in Portland? A. Yes, sir.

Q. When did you first notice them? A. One opened up here, oh, I don't know, a couple of blocks east of the Broadway Bridge.

Q. Do you know when that was? A. It was a little while after I came to work over here [680] in Portland.

Q. And you came to work in October of 1956? A. November, somewhere in that area.

Q. All right. Now, did you trade with the Regal stations? A. Yes, I started trading quite a bit with them because they were cheaper.

Q. Cheaper than whom? A. Than Perkins Oil.

Q. Now, do you recall how much cheaper they were? A. Oh, as I recall, about two or three cents, somewhere in that area.

Q. Do you recall anything about their advertising at these Regal stations? A. They said something about major gasolines and oil.

Q. Now, I should ask you something about your gasoline consumption.

How much gasoline did you consume in 1955 on a monthly basis, approximately? A. At the time I was running around one hundred to one hundred and a half a month.

Q. That is in gallonage? A. Dollars.

[681] Cross-Examination

By Mr. Hilliard:

[686] Q. As soon as you went back to Vancouver to work over there, did you start buying your gas at the station where you used to? A. Yes.

Q. You went back to the Champion stations? [687] A. Yes.

Q. You went back to the Champion stations? A. Yes. This is quite a ways out of my road to go clear back over here to buy gas.

[707] Leonard S. Gray

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bonyhadi:

Q. Mr. Gray, can you tell us where you live? A. 5617 Northeast Salmon Creek Street, Vancouver, Washington.

Q. How long have you lived there? A. About 1954 I came to Vancouver.

Q. Now, what is your business, Mr. Gray? A. Well, I am in show business—variety arts.

Q. In connection with your business, do you use quite a bit of gas? A. Yes, I do have a house trailer, chimp truck, and so on and so forth.

Q. Now, do you remember back in '55 and '56 where you bought your gas over in Vancouver? A. Yes, I bought my gas out on Hazedel there at the Champion station, I do believe it was at that time.

[708] Q. Did you buy any gas at Champion after Regal came in? A. Sir?

Q. Did you buy any gasoline at the Champion stations that you spoke about before Regal came in? A. Oh, yes, I traded there considerable.

Q. Did you stop buying—did you start buying at the Regal station after the Regal station came in? A. Did I start buying at the Regal station?

Q. Yes. A. After they came in?

Q. Yes. A. Yes.

[709] Q. How much gasoline did your tank hold? A. We held, oh, about, I believe( around 100 to 115 gallons, something like that.

[710] Q. Do you remember what the difference was between the price you would be paying at the Champion station north of Vancouver and the price you would pay at Regal here in Portland? A. I can't pinpoint the exact price, no, but I do remember that, in kind of figuring it out at home and so on, my books at home, why I saved, oh, anywhere from four to six dollars, something like that, which it would really pay me to come over here to get it. Plus I would pick up a few cigarettes while I was over

here. The trip would probably net me eight or ten bucks, what I would save on this side of the river.

\* \* \* \* \*

[725]                      **Albert H. Bunn**

was thereupon called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

**By Mr. Bonyhadi:**

Q. Mr. Bunn, where do you live? A. Ridgefield, Washington.

Q. And where do you work? A. Vancouver.

Q. Do you work for a gas station? A. I do.

Q. Which company's gas station? A. Texaco.

Q. How long have you worked there? A. A month.

Q. Did you work in another gas station before then?  
A. I did.

Q. Whose gas station was that? A. Don Fraser, Hazedel.

Q. Now, where did you work during the years of '55 and '57? A. Alcoa, Camas Paper Mill. I was working for a contractor.

\* \* \* \* \*

[728]    **Cross-Examination**

**By Mr. Hilliard:**

\* \* \* \* \*

[731] Q. What was the difference in the price at Regal and the price you paid at Champion? [732] A. Two to three cents.

Q. If you weren't trading at a Champion station and then traded at Regal, it would take that much difference to get your business away, I take it? A. Any time I can make two cents a gallon on gas, I will do it.

\* \* \* \* \*



[740]

**David Alling**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Hall:**

Q. Mr. Alling, where do you live? A. 901 Southeast 97th Avenue, Vancouver.

Q. How long have you lived there? A. Approximately four years.

Q. Where did you live between 1955 and 1957? A. Madrona Park, Vancouver. That would be 9401 Northwest 127th Avenue.

Q. What was your business during that period of time? A. Contracting.

Q. Did you trade at the Champion stations at all during that period of time? A. I did.

Q. (By Mr. Hall) Do you recall when you first—did you [741] trade at Regal stations? A. I did, sir.

Q. Do you recall when you started to trade with them? A. 1957.

[742] Q. Do you know how much under the Champion stations the Regal stations were at the time you started trading with Regal? A. I would figure about three cents.

[764] Mr. Bonyhadi: Your Honor, we would like to read part of the deposition of **Mr. Petersen** as it appears in the transcript of the prior proceeding.

“Q. Would you state your name, please? A. T. S. Petersen.

Q. Where do you live, Mr. Petersen? A. 246 West Santa Inez Road, Hillsborough.

[765] "Q. Have you been with Standard since 1922? A. Yes.

Q. You were general sales manager from 1941 to 1942; director and vice president from 1942 to 1948, and president from 1948 until just recently? A. November 1st of '61.

Q. Are you presently on a consulting basis? A. Not very much. I am almost completely divorced from the company now. I would be glad to give them any help that I can, but I am not formally retained as a consultant.

Q. Were you also employed—I guess that is the term—by the California Oil Company? A. You mean did I work for them?

Q. Yes, sir. A. Well, Standard Oil Company has all the subsidiaries working for the parent. Naturally, you have jurisdiction over all of the subsidiaries.

• • • • •

[779] **Donald William Fraser**

was thereupon called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

#### Direct Examination

By Mr. Tilbury:

Q. Would you state your name for the record, please?  
A. Donald William Fraser.

Q. Where do you live, Mr. Fraser? A. Vancouver, Washington.

Q. How long have you lived in Vancouver? A. Since 1946.

Q. What is the nature of your business? A. Gasoline and oil, the same.

Q. What company are you affiliated or associated with?  
A. I have my own company, the Don Fraser Company.

Q. How long have you been engaged in the petroleum business? A. Since 1946.

Q. And in what capacity or capacities? A. Primarily as a distributor of petroleum products.

\* \* \* \* \*

[786] Q. That is a fair statement? All right. Now, sir, do you recall during the period, if it did happen, from '55 to '58 when the Regal stations came into the Portland area?

Mr. Hilliard: Your Honor, we object to Regal on the same grounds as before.

The Court: I understand. You are making a record. Overruled.

Q. (By Mr. Tilbury) Can you identify the time for us, sir? A. I can't exactly, no. It was I believe in 1956. I can't give you the exact date, no.

Q. Do you recall the time of the year when it occurred? A. I believe it was in the summer, early fall.

Q. All right. You are not certain of the exact time? A. No, I am not.

Q. All right. Did you personally observe the opening of any stations or go by any of these stations shortly after they were opened? A. Yes, I did.

[787] Q. Could you tell us approximately when it was with reference to the opening of these stations? A. I was very interested in the operating, in the Regal operation because it was a new operation in this area. It was new to all of us that had been in the gasoline business and even some of us that were in in a small way because it was startlingly different from anything that we had seen before; a large supermarket type operation.

\* \* \* \* \*

Q. Could you tell us what you personally observed at [788] that time? A. Well, they were doing a great deal of business. It was a beautiful outlet, large signs. The price was a very definite factor. They had a premium program. They had large signs surrounding the back two sides of

the station with I remember very well free Cadillacs; I believe one a month, and a large sign, "Major Brand Gasoline," that they were selling.

. . . . .

[789] Q. And at that time can you tell us what you observed concerning the price at that station? A. The price at that station at that time, if I remember correctly, was approximately three cents, I believe under the major price, and an additional cent under the secondary price; and then in addition, we calculated that there was an additional cent which was devoted to premiums.

. . . . .

[792] Q. Following the opening of the Regal station and the price level as far as the general Vancouver area, did it go up or go down or remain constant? A. We had some price problems prior to Regal coming into the area. But I think Regal was the big bomb shell that really started our broke pricing primarily in the Portland-Vancouver area.

. . . . .

[793] Q. (By Mr. Tilbury) What kind of problems were there prior to Regal that you mentioned? A. We had price skirmishes. There were, there were price problems before Regal came into the picture.

Mr. MacLaury: Can the witness specify what area he is talking about, Portland or Vancouver?

The Court: Yes, you might as well develop that.

The Witness: I thought I stated before that it was both in the Portland-Vancouver area.

Q. (By Mr. Tilbury) All right. What do you mean by "skirmish," if we can pin this down a little bit more? A. Well, they were not so extensive. Price wars might be in an area due to individual operators. I might cover a considerable area but never of the magnitude that I recall that came about after Regal came into the area.

Q. Now, as far as your own relationships, were you buying your products prior to Regal from Mr. Perkins? A. Yes.

Mr., MacLaury: I object to that, Your Honor. The record shows that he was buying from Perkins Oil Company of Washington.

Q. (By Mr. Tilbury) All right. You were being invoiced by Perkins Oil Company of Washington, I believe? [794] A. Yes, sir.

Q. Were they products that were being obtained by Mr. Perkins? A. By Perkins individually from the Standard Oil Company of California.

[797] Q. (By Mr. Tilbury) As far as your dealings with the Perkins Oil Company or with Mr. Clyde Perkins, Mr. Fraser, after Regal entered the Portland market, were there any changes?

Mr. Hilliard: We will object to that question.

The Court: It will be overruled.

The Witness: Mr. Tilbury, I am not just sure from your question in what way you are pertaining. As far as personal relationship, there was no change. As far as the purchasing of products, there was change, because I did purchase products on the outside.

[806] Cross-Examination

By Mr. Hillard:

[823] Q. If I advise you, Mr. Fraser, that your records as to each of those retail outlets shows the relative same margin as to Ethyl and regular through '55, '56, and '57, would you say that then you would rely on whatever your records show as being the accurate representation of margin rather than on some memory that you have? A. I think it should, but I think you should bear in mind that all of those are owned stations.

Q. Who owns those particular stations? A. The first five are owned—I personally owned, and the last Mr. Perkins owned.

Q. Now, on the first five, you had—you owned them and each of them were leased to dealers? A. Yes.



[824] Q. (By Mr. Hilliard) And you leased them, on a rental basis, monthly rental? A. It should have been on a monthly rental. In many cases we had to absorb rent which could have applied in some of these, to these units. I don't know.

Redirect Examination

By Mr. Tilbury:

[830] Q. (By Mr. Tilbury) Mr. Fraser, as applied to the business in general, that is, this particular type of business, that is, the gasoline business in the broad sense, could you give us an opinion, your best opinion, as to what would [831] be required by an ordinarily prudent businessman in this category as a safe margin of profit with which to operate its business during the claim period, that is, from 1955 through 1958, not in this particular business, but in the business as a whole.

[832] The Witness: In order to survive, I think you have to have in our type of operation around three cents.

[875] Dwight C. Logan

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tilbury:

Q. Would you state your name, please? A. Dwight C. Logan.

Q. Where do you live, Mr. Logan? A. I live in the City of Seattle at 7025 19th Avenue Northeast.

Q. How long have you lived in Seattle? A. I have lived in Seattle since January of 1958.

Q. What is your occupation at the present time? A. At the present time I operate a bookkeeping service.

Q. What is the name of the bookkeeping service? [876] A. Dwight C. Logan and Company.

Q. Is this your own company? A. Yes, sir.

Q. What sort of business bookkeeping do you do? A. Principally we handle service station accounts.

Q. Any particular type of service station? A. No, we cover practically all brands that are represented in the market today.

Q. Would you have some Chevron or Standard stations, for example? A. At the present time I do not.

Q. Have you had some in the past? A. No.

Q. Can you give us some indication as to how many service stations you might do the bookkeeping for? A. Basically about thirty.

Q. And prior to your present work—incidentally, how long have you been doing this type of work? A. I have been doing this work now about a year and a half.

Q. Have you had some other experience in the petroleum business with the exception of this? A. Yes, sir.

Q. Could you please tell the jury the nature of this experience as it relates to the petroleum business? [877] A. Well, I was employed by the Union Oil Company in 1934 as a service station attendant in the City of Seattle, and I worked continuously for the Union Oil Company from that period until I entered business for myself.

. . . . .  
[878] In 1955, in May of 1955, I was transferred to the City of Portland and assigned the job of representative, being an all inclusive title, as there were only three of us that came here to organize a new company for the Union Oil Company, a wholly-owned and wholly-operated subsidiary.

We acquired a group of existing service stations and operated as a cut-rate or secondary supplier, and I re-

mained here in the City of Portland through the entire year of 1957.

[879] In 1958, as I testified, I was transferred to the City of Seattle and given the responsibility of state sales manager for the State of Washington for the Western Petroleum, a position that I held until March of 1962, at which time I terminated.

[880] Q. (Continuing) Now, what was the name, Mr. Logan of the secondary supplier or cut-rate dealer that you helped assist in some way that you mentioned? A. What was the name of the company that we replaced?

Q. What I am speaking of, I am speaking of in 1955, I believe you indicated you came to Portland to help organize another company? A. Westway Petroleum Company.

Q. Is that company in some way connected with the Union Oil Company? A. Yes, it is a wholly owned subsidiary.

Q. Is that true to the present time? A. To the best of my knowledge.

Mr. Tilbury: I will confine it, that is all right.

A. We operated during the period of '55 through '57 under the brand names of Golden Eagle in the state of Oregon and United; and in the state of Washington as Eagle and United.

[885] Q. Mr. Logan, do you recall when, if they did, the Regal stations entered the Portland market?

Q. (By Mr. Tilbury) When the Regal stations entered the Portland market, yes? A. To the best of my recollection it occurred along about [886] October, 1956.

Q. How do you recall the date? A. Well, my recollection is quite clear due to the fact that in my opinion we, we saw a new concept in marketing.

Q. Would you define that for us? A. Yes, certainly. Heretofore, we had had in the state of Oregon what I would

describe as a fairly stable and tranquil market in which prices were fairly stable. We had had a few price upsets, but I would describe them of very short duration. In the industry we called them brush fires, and at this time Regal came in and offered I remember some very definite factors that entered into it. One thing that struck me particularly was the fact that heretofore cut-rate service stations had always sold at less than what major brands had sold at, but they had never advertised their prices. When Regal opened up, they opened up with advertisements of the finest, the best, and gave away a free Cadillac once a month and did one other thing, showed a price sign and advertised that it was major brand gasoline, which we had never seen before. So, in my opinion, it brought about a new concept in marketing that has had its effect felt.

• • • • •  
[888] Q. All right. Were there price signs that had appeared at service stations before the advent of Regal in the City of Portland? A. Oh, yes.

[889] Q. Now, were they any different than the signs displayed at Regal? A. Yes. We had never—well, one thing, Regal, of course, was the only secondary, as it purported to be, that advertised major gasoline was the major difference. Otherwise, there were price numerals to buy gasoline for less money and receive a free Cadillac.

• • • • •  
[890] The Witness: Well, if I understand the question, you are asking me if there was a difference in the level that the secondary service stations were selling at as compared with the major service stations; is that your question?

Q. (By Mr. Tilbury) Yes, sir, that is correct. A. Yes, sir, there was. It was a two cent differential.

Q. Was this something that was general or was it confined to any particular— A. No.

Q. —kinds of stations? A. This was general throughout the state.

Q. All right. Now, did you personally observe the price signs at the Regal stations? A. Yes, sir.

Q. I believe you indicated you made purchases yourself at the Regal stations? [891] A. That's right.

The Witness: I made a purchase at 39th and Powell, and, as I recall, I purchased it—

Mr. MacLaury: May we have the time, Your Honor? I don't—

The Witness: As I recall, in October of '56, to the best of my recollection. The exact day, I couldn't tell you. The money I paid—the cash money I paid was at the same rate per gallon as was offered at our Golden Eagle service station at 50th and Powell. However, I was given coupons which had a redemption value of two cents a gallon.

Q. (By Mr. Tilbury) How would you classify your station, the Golden Eagle station, in terms— A. As a secondary.

Q. As a secondary? A. That's right, or cut.

Q. Was your station giving the premiums that were being [892] given at Regal? A. No.

Q. Do you recall in what manner the stamps, or whatever it was you got, could be redeemed? A. They could be redeemed in their—oh, they had a beautiful variety of pots and pans and toasters and waffle irons and all manner of fine electrical appliances, in addition to smaller items, such as—I remember, I went back and redeemed mine in a rake, because I didn't make repeated purchases. So I went back and applied against the purchase of a grass rake to reduce the price of my grass rake.

Q. All right. Now, you may have described this previously. I don't mean to go over the same ground again. But was there any kind of other inducement besides the giving of stamps? I mean, was there a drawing of this kind? A. Yes. I received a ticket which would entitle me on the chance for drawing of a free Cadillac each month.

Q. Now, Mr. Logan, do you recall in the City of Portland whether the prices went up or down or remained at the same level in this immediate area after the opening of the Regal station at 39th and Powell?



[893] The Witness: Yes.

Q. (By Mr. Tilbury) You do have knowledge. Could you tell us the details, Mr. Logan? A. Well, I remember them very well, because from this point on our principal activity became conducting price surveys in such a manner that we could remain in a competitive position; because from this time on the retail market in the City of Portland and on further south, and it spread northward, southward, where the price generally depressed.

[894] Mr. MacLaury: Your Honor, if they are going to be allowed in the record, to preserve our record, I would like to make the further objection that the evidence has not established this witness as an expert in the Portland market on pricing and pricing effects in the '56-'57 period.

The Court: He has had twenty years experience with one of the major oil companys. I will leave it to the jury what value they want to give his opinion.

Q. (By Mr. Tilbury) Mr. Logan, did you have occasion to go to Vancouver from time to time during the claim period '55 through '58? A. Yes, sir.

Q. Why would you have occasion to go to Vancouver; any particular reason? A. Well, in the activities of operating an oil company, we would find particularly that during an area of disturbed prices, we had to watch many areas, because we found that our retail prices were quite often affected by areas not in our immediate vicinity. So we came to checking Vancouver on quite a regular basis.

Q. Can you tell me, sir, if you noticed whether the retail prices in the City of Vancouver went up or went [895] down following the opening of the Regal station? A. Well—

Q. (By Mr. Tilbury) Did you have stations in the City of Vancouver? A. No.

Q. All right. But you did have occasion to go over there?  
A. I certainly did.

Q. And the purpose of this was what, specifically? A. It was to determine what the market conditions were in the City of Vancouver and its environments.

Q. All right, sir. Now, I will ask you the question again, if I might: Did the prices decline or did they go up or did they remain constant? A. They generally followed the depressed condition that became apparent in the City of Portland.

• • • • •  
[897] Q. (By Mr. Tilbury) Would you define that term for us, [898] Mr. Logan. A. Brush fire in the industry to me, the meaning that I put on it, is a price disturbance or a period when, and it could be any number of reasons, somebody began to depress their prices and were followed by competition. In other words—may I give a for instance?

Q. Yes, sir. A. The brush fire that sticks most permanently in my recollection was in the City of Eugene. We had had a fairly stable market in Eugene. Not all prices were the same, but basically it was quiet. No price signs appeared. And we had a condition arise where one of the majors, it happened to be Shell, became disturbed with a particular cut-rate service station and commenced posting prices that they felt were competitive with that situation. This continued on for a period of either thirty or forty-five days, and the prices became quite depressed and the situation finally seemed to correct itself. And to me, this is a brush fire, one not of long duration. But nevertheless, it's a sizeable condition of upset in prices, if I make myself clear.

[899] Q. (By Mr. Tilbury) Would you describe the one that happened at the Regal as a brush fire? A. No, no.

Q. How would you describe it in terms as a brush fire? A. Well, to me Regal brought in a new concept of marketing and we have had depressed prices ever since.

Q. Were there more or less price signs that appeared in the City of Portland following the entry of Regal? A. There were more.

Q. And were they different in any way from price signs as appeared in the city before Regal entered? A. No, they just had numbers on them.

Q. I see. Now, did you have occasion to go to the City of Albany at any time during the claim period of '55 to '58? A. Yes, sir.

Q. Did you have a station in the City of Albany or the surrounding areas? A. We had two.

Q. Did you have occasion to observe the prices at that station and other stations in the City of Albany following the opening of the Regal station at 39th and Powell in the City of Portland? A. Yes, sir.

Q. Would you have done this regularly or frequently or [900] what was the situation? A. I would do it regularly.

Q. Now, can you tell me, sir, with respect to the price level as you personally observed it in the City of Albany following the opening of the station at 39th and Powell, whether the price level went up or went down or remained constant following the opening of Regal?

Mr. MacLaury: Here I believe you should have this pinpointed as to time further, more precise than just following the opening of the Regal station, Your Honor.

Mr. Tilbury: All right, I will be glad to add that.

Q. (By Mr. Tilbury) Can you pinpoint the time in connection with your answer, as much as possible? A. Just by recollection I would say it was within the early part of 1957.

Q. All right. What happened to the price level, as you observed it, at that time? A. The price level became depressed, it continued to go down. The Westway records would indicate the exact level, I am sure.

Q. Is that something of short duration or longer? A. Well, it carried on, it was of long duration.

Q. All right. Now, did you have occasion to go to the

Roseburg area at any time during this period? A. Yes, sir; yes.

[901] Q. Now, without going through all of the same background, and if you can pinpoint the time, can you identify it or, first, let me ask you, did you have stations in the Roseburg area? A. Yes, sir, we did.

Q. How many stations did you have there? A. It seems to me that we had two.

Q. Were they selling under the Golden Eagle brand? A. Yes, sir.

Q. Can you tell me then, please, what happened, if anything, to the retail price level in the City of Roseburg following the opening at 39th and Powell by Regal—

Mr. MacLaury: Your Honor, the witness has already indicated that is speculative and that the records themselves of Westway would show these prices better than he could testify, so we will object to the speculation of price depressions and time.

• • • • •  
The Witness: Well, the trend that was indicated in Roseburg was slightly different than—according to my recollection, than we had experienced closer to Seattle, in that the Roseburg price remained above the area for [902] quite a long time to the point that our volume was seriously impaired, our volume dropped and—

• • • • •  
The Witness: And it was not until the Roseburg market dropped to a level competitive with the area of, say, fifty miles north that their volume came back to where it was, and so I would say in my recollection that the level was later coming to Roseburg, but it came eventually.

Q. (By Mr. Tilbury) What way do you mean it came? A. That is depressed prices below what they had been came to Roseburg at a later period than it did, say, in Albany or Eugene.

• • • • •

[904] Q. All right. On the basis of your experience and some twenty-eight years, I believe you indicated, with the Union Oil Company, would you be able or is there in the trade something that could be defined as a gasoline marketing area for the City of Portland? Is there something of this kind that would be generally accepted or on the basis of your experience that you could define for us without asking you to define it now? A. Yes.

Q. Would you be able to make a definition of this kind? A. I think so.

Q. Could you define the area in terms of the 1955-58 period? A. Yes.

Q. All right, sir, and on the basis of that experience, how would you define the gasoline marketing area for Portland as it related to that period? A. To which period?

Q. The period, let's say, subsequent to Regal, or let's take during the entire period, '55 to '58, and if it [905] changed, if you could explain the nature of the change. A. The concept of the marketing area during this three-year period, I think, changed quite drastically. To begin with, I remember very well we felt that we could subdivide the City of Portland into, if I remember right, twenty-three marketing areas. In other words, we felt that we could meet competition where we found it within any one of these twenty-three areas.

Q. What is the area of the twenty-three? A. Well, we might be as concise an area as Barbur Boulevard for one mile up here, and then for some reason there would be an arbitrary line drawn there. In other words, the Northeast section out as far as 40th, in other words, just a block of—almost like a voting precinct, that was the original concept of the marketing area, but as time progressed, it became very apparent that this price disturbance would spread—

Mr. MacLaury: (Interposing) I object to this witness testifying as to what became apparent. I think if he wants to say what he saw individually and personally, he could testify, but to say generally that it became apparent to



others, I think is way beyond his scope, and I move to strike that part of his testimony,

The Court: Members of the jury, you understand this witness is not giving substantive testimony as to effect or [906] causation in connection with the issues between the plaintiff and the defendant as such. This witness is merely giving to you descriptions of marketing conditions and phases of marketing of gasoline as he in his opinion observed it in connection with his work for his company, and the Court is permitting this experience to be given to you by this witness just as background information for you to at a later time fit in the claim and counterclaims of the parties. That is the purpose.

. . . . .

The Witness: The best way I can describe a disturbance and its effect upon a marketing area is much like if [907] you had a placid pool of water that is absolutely smooth and you drop a pebble in the center of that pool, eventually the ripples will reach clear out to the outer edges.

. . . . .

[908] A. (Continuing) The effect of this on the concept of a marketing area was that the marketing area kept enlarging itself until, if we were to recognize that for instance the advent of a price disturbance on Broadway soon would affect us on Barbur Boulevard and vice versa. A Barbur Boulevard disturbance would eventually affect us clear out on 82nd. In other words, people who live in one side of the city and work in another quite naturally will buy gasoline where it is sold the cheapest. So, the concept of a marketing area kept enlarging itself until it became very apparent that a disturbance in Portland could be felt very effectively as much as a hundred miles in any direction.

. . . . .

Q. (By Mr. Tilbury) Did your company, either Westway or Union, change its identification of the marketing following the opening of the Regal station in those things you are apparently aware? A. Yes, sir.

[924] Q. All right. Now, just relating it to the practices of your own company, maybe you have testified to this already, but did the program—the dealer assistance program did change following the entry of Regal; is that correct? A. That's correct.

Q. Did that continue or did it stop within a few months, the existence of a dealer assistance or subsidy program? A. No. It has carried on, even to today.

[937] Q. And during the claim period, that is from '55 through '58, who would you define to be the major oil companies operating in this area? A. Oh, there were seven, I think.

Mr. McLaury: Just a moment. Could we have the area defined?

Mr. Tilbury: Well, I thought I said the Portland area. If I didn't, I will qualify it to that extent.

A. Portland area?

Q. (By Mr. Tilbury) Yes, sir? A. As I recall, there were seven majors. Would you like me to name them?

Q. Yes, sir, please? A. Shell, Standard, Union, Mobil, and the Signal which we consider along with Standard, Associated, Texaco. There's somebody else. You will forgive me. At any rate, there were seven.

Q. Richfield, would that be one? A. Richfield, Richfield.

[938] Q. (By Mr. Tilbury) Mr. Logan, during the 28 years that you were associated with the Union Oil Company, would you tell me as you observed whether the Union Oil Company would respect contract accounts held by other major oil companies; in other words, other companies be-

sides majors for that matter; what I am speaking of, to try to shorten this up, would be situations where there was an existing contract in effect between either a major or someone less than a major for a given period of time, was it the practice of Union to attempt to take away customers in that category during the period of their contract? A. Are you talking about the period of '55 to '58?

Q. Well, yes, we could limit it to that period? A. Yes.

Q. And how did it work; I mean what was the result?

A. Well, the result was that it worked primarily on what were considered in our language 100 percent accounts, and [939] those accounts in which he did not, you did not have leases on. You had merely a promise. For instance, if Standard had a product agreement with a given dealer, we would honor the contract until it had expired. We would not go in and try to make another contract on top of the Standard contract.

Q. In other words, to use an illustration, if Standard had a contract with Customer A for five years, you would not attempt to go in during this five years? A. That is correct.

Q. And if Mr. Perkins, we will say you had a contract with Perkins Oil Company who had one of its customers for five years, would the same apply? A. Yes, sir, we had that situation where we did honor it.

[942] Mr. Tilbury: All right, sir.

Q. (By Mr. Tilbury) Mr. Logan, as a result of your experience in the years that you have indicated, do you know whether or not truckers would on occasions or more than one occasion, if there were a differential in prices between two locations, would they have a tendency to buy at one location as against another?

[943] The Witness: Yes, sir, I can give you some, I think, very pertinent observations, because we had one of the

largest truck stations in Central—Western Oregon at Albany known as the T and R truck stop. And any time that the market price or the trucker's price, if you want to call it that, for fuel was lower in Portland, this man's volume was very seriously hampered, and we felt it necessary in order to maintain a satisfactory volume at this truck station to keep him competitive with Portland prices. So they very definitely followed the prices even more than the normal retail trade due to the fact that they are over-the-road and they are larger storage. They can move.

. . . . .

[944] Q. (By Mr. Tilbury) Now, you have answered Medford. Do you know any situations where the products moved by truck further north than Medford which originated in the Bay Area? A. No, sir.

Q. In San Francisco? A. No, sir.

Q. Would there be any particular reason for that, to your knowledge? A. It would just be the economics of it. You could buy [945] gasoline cheaper in Portland and truck it any place as far South as probably Grants Pass cheaper than you could truck it out of—out of the Bay Area.

. . . . .

The Court: It will be overruled.

Q. (By Mr. Tilbury) Can you tell me, Mr. Logan, was it commercial or private accounts as such, that is, private-commercial accounts in those situations where they had their own pump, their buying practices, did it change following the entry of the Fortune stations or the Regal in Southern Oregon? A. Yes, sir.

Q. Or the Regal stations in Portland? A. Yes, they did change.

. . . . .

[948]. Cross-Examination

By Mr. Mac Laury:

. . . . .

[955] Q. Now, in any event, you are willing to concede now, I take it, that price signs had appeared prior to the

advent of Regal to the extent that the city fathers thought it necessary to pass an ordinance? A. That is correct.

Q. So you have been in error in some of your testimony here with respect to time periods and what occurred at one time with respect to what occurred at another time? A. Not entirely.

Q. Not entirely, but I say, on occasion you have been in [956] error in some of your testimony with respect to time periods? A. Obviously I was in this instance.

[965] Q. Now, what generally would be the situation then with respect—what generally was the relationship between the retail price of an independent brand and a major brand? A. Usually 2 cents.

Q. So, my question then more often than not the minor brands would be in your survey 2 cents below the major brands; that was my question? A. More often than not they would be.

Q. Yes. A. In a disturbed area, my recollection is that quite often this 2 cents would diminish to one cent.

Q. I see. Then when you are talking about 2 cents differential, you are talking about a situation that you consider to be normal and not a price war situation? A. That's correct.

Q. But, is it your testimony then where prices tended to become depressed and competition became hotter, then that differential would close up? A. That's correct.

[966] Q. At any particular time there might be a variation between a General Petroleum station in South Portland and a Chevron station in North Portland of three to four cents? A. I would agree with that, yes.

Q. That is my only point? A. That's right. That's right, yes.

Q. Now, you testified at quite some length about this new concept of marketing; and you mentioned price signs being used by Regal, and you mentioned the promotional plans, the use of premium stamps? [967] A. Yes, sir.



Q. You also mentioned that the promotional plans such as the raffling of a Cadillac? A. Yes.

Q. And now so that the jury doesn't—well, let me put it this way. That Cadillac wasn't one Cadillac in Portland given away every week, was there? A. I didn't so testify.

Q. No, I know you didn't. That is why I am asking you to straighten it out. A. As a matter of fact, no.

Q. As a matter of fact, there are Regal stations in California? A. Yes.

Q. Arizona? A. That's correct.

Q. In Southern California? A. Yes.

Q. As well as in Oregon? A. Right.

Q. When you advertise one Cadillac being given away, that does mean it was one Cadillac for all the entire chain of stations of California, Arizona, and Oregon, is that correct? A. That was my understanding.

. . . . .  
[1968] Now, you testified to this new concept in marketing; now, in your experience in the retail business, this new concept of advertising prices, it was not very much different than one of the large super markets used— A. Not at all.

Q. —when they posted their signs on the windows of the various prices to meet a particular special deal on butter; it is about the same? A. That is correct.

Q. It serves the same purpose? A. Right.

Q. And the department stores who advertise in the newspapers? A. That's right.

Q. Newspapers and radios on clothes; special prices on shoes?

Now, in your experience, it was this aspect of this new concept of marketing that you say had the major impact on the market? A. And it was what?

Q. And it was this new concept, the advertising and this [1969] sales promotion, that had the major impact? A. Right.

Q. And did you find in your investigation into this retail operation that the people who drove into the Regal

stations did so because they appreciated knowing what the price was going to be before they bought their gasoline? A. They certainly did.

Q. It was rather something of a service that was offered to the public that the public was apparently attracted to, is that correct? A. That is correct.

Q. Now, you testified, Mr. Logan, that these dealer assistance programs came into effect in order to help the dealer during a price war or price disturbance situation, is that true? A. That is true.

Q. Now, to your knowledge, were—was any company, major or minor or independent, extending price assistance to its dealers in the Portland area before October, 1956? A. I am sure they were.

Q. You are sure they were? A. Right.

Q. And would the fact that a company was offering dealers or extending to its dealers price assistance in the cases you said, that in the area that that price assistance extended [1970] there was some kind of price disturbance? A. That's right.

Q. And would the corrolary be true that when these companies stopped extending the assistance that the price disturbance was likely to pretty well clear up? A. I would think so.

• • • • •

Q. Now, it wouldn't be your testimony, would it, Mr. Logan, that these progressive price disturbances in Portland after 1956 were due solely to the advent of the Regal stations, would it? A. No.

Q. There would be other factors involved? A. Oh, surely, it could be any one of a number of factors.

Q. Other intervening factors? A. Sure.

Q. It is the truth, isn't it, Mr. Logan, that in the Portland area in 1955 and '56, you recall it was after the Korean War, the supply of gasoline generally used by [1971] the public was greater than it was in '53 or '54? A. The supply?

Q. The supply of gasoline on the market was greater?  
A. Was in surplus?

Q. Correct. A. Was in surplus?

Q. Yes. A. Yes. Yes.

Q. And there has been a substantial expansion in the refining facilities, for example, of the Union during the past three or four years? A. Definitely, yes.

Q. And that was true in '54? A. Right.

Q. But it had an impact on not only the Portland market but on other markets through the United States? A. That's correct, it did.

[972] Q. You would have no way of knowing. Now, during this period of 1955, '56, and '57, there were other companies, were there not, other than brand dealers—dealers selling brands other than Regal that were using stamps, green stamps? A. Green stamps?

Q. Yes, green stamps. And Westway used green stamps?

A. Oh, sure.

Q. Did some of the Champion stations down in Southern Oregon use green stamps? A. I'm sure they must have if they possessed them.

[973] Q. Now, I believe you testified that as far as Westway is concerned, its dealer assistance program continued on after December, 1957? A. Oh, yes.

Q. And in 1958? A. Right.

Q. And in 1959, and it exists today? A. Correct.

Q. Many of the aspects of the market that you have testified to with respect to use of price signs, price depressions, [974] in 1957, they occurred in '58 and '59 and even today; isn't that true? A. Yes, sir.

Q. You wouldn't attribute—you wouldn't attribute these depressed prices to the supply of any particular retailer or chain of retailers by any particular supplier or that one factor alone? A. Not to the continuing ones, no.

[988] Direct Examination

By Mr. Tilbury:

"Q. Would you state your name, sir? A. Howard G. Vesper.

Q. Your residence? A. 6160 Acacia Avenue, Oakland 18, California.

Q. Your occupation? A. Executive.

[989] "Q. And in what role are you? A. I am presently President of Standard Oil Company of California, Western Operations, Incorporated.

Q. Your offices are in this building? A. Here.

Q. How long have you occupied that position? A. Approximately four years.

Q. What is your authority in that post? A. I am the principal executive responsible for the operation of that company.

• • • • •  
Q. Under what circumstances would you make the final decision and under what circumstances—by "you", I mean your company—and under what circumstances would it be decided by the holding company, in a general way?

[990] "A. To answer that I must know what you mean by a final decision. A final decision in what area and on what?

Q. Well, if you can explain the differences, perhaps this would be easier, because I am not sure that I have enough knowledge to ask the question. A. Well, I have but my Board of Directors in Western Operations Incorporated are the general authorities for a final decision on most operating matters. However, such basic questions as a change in posted price of crude oil to any general extent, a change in posted price generally of gasoline or other principal products, these would be referred to the parent company executive committee and Board of Directors to what is called a contact officer. There is a contact officer of the corporation designated for each of the operating companies through which we run our business. A particular one for Western

Operations, Incorporated is Mr. Owen Miller, President of the corporation.

[997] "Q. Is it a fair statement to say, then, that prior to 1958 there was no established policy with regard to assisting jobbers with regard to a price war? [998] "A. Yes, there was a very definitely established policy. The policy was not to do it.

Q. All right. A. There was discussion of it, but we had not felt it was a proper business thing to do at that time."

"Q. Now, comparing this with the Chevron stations, has there been a similar development there or has there been an established policy to protect them at a different time? A. The policy here too has been fluid. In the years that you mentioned, 1954 to '58, there was a policy of giving some assistance to Chevron dealers in times of depressed prices. That policy has become more lenient as time has gone on, for exactly the same reasons that I have outlined, and we give more assistance to Chevron dealers today than we did then.

Q. Now, in the years from 1954 to 1958 was six cents the basis of this computation, or was there an established figure? A. The computation was an entirely different kind of a computation, because we are talking here about dealers, not about jobbers who sell to dealers.

Q. Yes. [999] "A. The basis for our Chevron dealers at that time started with what might be called a normal margin above tank wagon, as I recall it, of about four and a half to five cents, in that order of magnitude. Then as the price dropped there was a sharing of the drop between the company and the dealer down to a figure of something on the order of three and a half cents above tank wagon.

"Now, as time has gone on the starting margin has increased somewhat because of the costs of doing business



and of the changed conditions of business. The margin today at which we start is six cents on regular gasoline and six and a half on premium. Today our policy is to take three-quarters. The company takes three-quarters of the drop with no stop, unless competition forces us to put a stop in, which sometimes happens.

Q. If the price should go to an extremely low figure, would you reach a situation where the Chevron dealer would have no margin to work with at all? Is this possible even on the  $\frac{3}{4}$ - $\frac{1}{4}$  formula? A. This is possible within our present formula. As a practical matter. I don't think we have ever reached that point, because before we get there some other company or companies with whom we are in competition will establish some kind of a stop price for their dealers, and we are forced to meet that as a matter of competition.

[1000] "Q. Going back to the earlier period, when I think you said that there was a sharing down to three and a half cents, if I am remembering your testimony correctly, what happens if it goes below that figure or did go below that figure? A. In that case it would stay at three and a half cents.

Q. So that a Chevron dealer would have been assured of three and a half cents as a minimum? A. Yes.

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[1044] Mr. Bonyhadi: Your Honor, we have the deposition of Mr. Harris now, **Ben Harris**.

The Court: Very well.

Mr. Bonyhadi: Mr. Tilbury will read himself, he took the deposition, and I will read Mr. Harris' answers.

• • • • •  
"Q. Would you state your name, please? A. B. F. Harris.

Q. And your home address, Mr. Harris? A. 4237 92nd Southeast.

Q. Seattle? A. Mercer Island, Washington."

Q. Your occupation, sir? A. I might say I am retired at the present time.

[1045] "Q. What was your occupation prior to retiring? A. In the wholesale gas distribution.

Q. Do you have your own company? A. Yes.

Q. And the name of the company, sir? A. Harris Distributing Company and Harris Petroleum Company, Incorporated, succeeded that.

[1050] Q. When was this Harris Petroleum Company first started? A. I think in May of 1947.

Q. Where were your stations located, Mr. Harris? A. Tacoma, Seattle, Renton, Mt. Vernon.

Q. However, there have been other locations in the past that are no longer serviced by any of your stations? A. Yes.

Q. Where were these located, sir? A. In the same location, same general area.

[1051] "Q. Did you market any further south than Tacoma? A. We didn't market any further south than Tacoma, no.

[1052] Q. Were the retail stations that you owned, were they manned by company employees? A. We tried as much as we could to get lessees for them, although we could have operated some of them. We operated them both ways, to his sorrow and detriment.

[1055] "Q. I believe you said you started with Signal Oil and Gas about 1947? A. 1948.

Q. Did you continue to buy most of your products for a considerable period of time from Signal Oil and Gas? A. Well, almost. 1959. About ten full years anyway.

Q. Did you buy heating oils from Signal Oil and Gas Company? A. No, we didn't. They didn't have any for sale.

[1956] "Q. How was it sold by your company, the heating oil? A. Well, we sold it to various heating oil dealers like that.

Q. Where were they located, sir? A. Well, I just happened to have in mind there was one out at Midway. That's south of Seattle. Another fellow out here on Holman Road.

Q. Seattle? A. Yes. I think those were our two biggest customers.

Q. Did you sell any south of Midway?

Mr. Hilliard: We objected because there is no time specification.

Mr. Bonyhadi: Line 20, page 1181 of the transcript.

"Q. Did you sell any south of Midway? A. We—yes, I am sure we did and locally in Tacoma we have an interest in a fuel oil distribution there. This fellow sells about, I would say, 600,000 gallons a year.

Q. Did you sell any in Olympia? [1057] "A. Did we sell any in Olympia? A. Yes."

Mr. Hilliard: I objected to that, your Honor, on the basis the witness indicated that he didn't remember.

Now, your Honor permitted the answer to it. "Did you sell any in Olympia? A. Did we sell any in Olympia?

Q. Yes. A. Gosh, I don't remember. We may have sold some to Henry Maxwell down there, although I don't recall. We sold him some products down there from time to time.

Q. Did you make any sales in Centralia of either gas or heating oil? A. I don't know if we did or not. If it was it was some infinitesimal quantity that didn't amount to anything.

[1095]

Mark D. Leh

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tilbury:

Q. Would you state your name, please, for the record?

A. Mark D. Leh.

Q. Where do you live, Mr. Leh? A. Pasadena, California.

Q. What is your occupation at the present time? [1096]

A. Consultant.

Q. For which company? A. For various companies.

Q. Can you identify some of these for us, please? A. Well, recently Lee Manufacturing and Alameda Refining Company.

Q. Where is that located, sir? A. In Los Angeles.

Q. All right. Have you had experience in the petroleum business besides your present experience with Alameda Refinery? A. Yes.

Q. Will you tell the jury, please, about your experience?

A. I graduated as a geologist in 1924 and then entered the marketing of petroleum products at the retail level for the Pacific Coast and introduced General Petroleum gasoline in this area in the whole Pacific Coast, which is now Standard Oil of New York and Mobil gas.

Q. Could you fill us in a little bit, the highlights of this career? How long were you with General Petroleum Company and Standard Oil of New York? A. About fourteen and a half years. 1924 to late 1938.

Q. What positions did you occupy during that time? A. Started as a scrip salesman and ended as general sales manager.

[1122] Q. (By Mr. Tilbury) Mr. Leh, have you had some experience with credit cards and the development of credit cards in your experience in this industry? A. Yes.

Q. Would you give us some indication as to how much experience you have had in that connection?

[1124] A. In excess of thirty years.

Q. Could you tell us what it costs to develop such a program as far as your experience is concerned, to your knowledge?

Q. (By Mr. Tilbury) Well, during the period of 1955 to '58, to simplify it, would you tell us what the cost would be? A. The cost would be one and three quarters cents per gallon at the retail level for credit card business.

[1125] Q. (By Mr. Tilbury) What does that include, sir, the one and three quarters cent? A. Well, it includes the entire system. It includes opening the account, making of the credit cards, mailing it, monthly statements, billing, and the average consumer uses seventy gallons of gasoline per month, so he makes ten purchases per month, that means ten billings. And the whole cost of operating that system is right at one and three quarters cents per gallon.

[1126] Q. Mr. Leh, during the period 1955 to '58, who would the major companies be in the Pacific Northwest? A. The major companies?

Q. Yes, sir. A. The term "major" is a trade designation and it designates Standard, Shell, Texas, Mobil, Richfield, Union, and Tidewater. I believe that is seven.

[1127] Q. You would not classify Hancock or Norwalk in this category? A. No, they would be classified as independents or some people call them minors.

Q. Or the Signal Oil and Gas Company was not included in your gas companies? A. Signal Oil and Gas Company?



Q. Yes, in the period '55 to '58, would you have classified them as a major? A. No.

Q. All right. Did they have a refinery, to your knowledge, during the period '55 to '58?

• • • • •

The Witness: No, not to my knowledge.

Q. (By Mr. Tilbury) Would you classify them as a jobber? Would that be a proper term? A. Yes, they were a jobber, so far as gasoline was concerned.

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[1131] Cross-Examination

By Mr. Hilliard:

• • • • •

[1150] Q. Well, this, you would then correct the statement that you had witnessed the diminishing volume of jobbers in volume and numerical of Standard Oil Company of California? A. I would add in relation to the total petroleum industry.

[1151] Q. I see. A. They enjoy a lesser and lesser position.

• • • • •

[1239] **Clyde Perkins**

the plaintiff herein, thereupon resumed the witness stand as a witness in his own behalf, and, having been previously duly sworn, was further examined and testified as follows:

**Further Direct Examination**

By Mr. Tilbury:

Q. Mr. Perkins, when you were on the stand last week, as I recall, we had just started discussing the opening of the Regal stations in Portland.

Do you remember about where we were at that time? The opening of the Regal stations in Portland. A. Well, I just don't know whether I—yes, I believe you did ask me if I remembered the opening of the Regal stations in Portland.

Q. All right. Did you personally drive by any of these stations yourself? A. Yes, I did.

[1240] Q. All right. Did you go by the one at 39th and Powell before the one opened at Broadway and Wheeler? A. Yes, I did.

Q. Would you describe for us what you personally observed at that time? A. Well, I observed something that was entirely new to me. I observed large price signs. I observed the fact that they told me that it was major gasoline. There was a large sign up there said, "Best major gasoline." I inquired from among the operators there—

[1243] Q. (By Mr. Tilbury) My only question, Mr. Perkins, is, did the price level at that station go up or down following the entry of Regal stations?

Mr. Hilliard: I object to the form of the question, Your Honor, which inherent in the question, contains an implication of cause and effect so far as Regal.

The Court: It will be overruled.

The Witness: The price level went down.

Q. (By Mr. Tilbury) All right. Did it come back up within a short time or otherwise? A. It did not.

Q. In what way do you mean? Would you explain what you mean by that? A. Well, it went down and continued to go down and I think it has been down ever since.

Q. Did you have occasion, Mr. Perkins, at any time to discuss the Regal stations with any Standard officials? A. Did I discuss the Regal station with the officials?

Q. Yes, sir. A. I did.

Q. Could you identify the individual or individuals first without relating the conversation? A. I can identify them by name. Mr. Johnsen and Mr. McClanahan.

Q. And their first names, just for the record? [1244] A. Mr. August Johnsen and Mr. E. J. McClanahan. And I discussed it with Mr. Cuyler also.

Q. Howard Cuyler? A. Howard Cuyler.

Q. Let's take your conversation with Mr. Johnsen first. Did you have more than one conversation with him about Regal? A. I had several conversations with him about Regal.

Q. All right. Can you identify the specific time and places of these conversations? A. Well, shortly after they —when they first opened, I didn't know that they had any connection with Standard Oil and I had a conversation with them then, but later on in the spring of the year or after the first of the year I had a conversation, a direct conversation, with Mr. Johnsen and with Mr. McClanahan about these stations.

Q. All right. Where did this conversation or conversations take place? A. In the Standard Oil office in San Francisco.

Q. And who was present? A. I can't tell you all that was present, but I told you who I directed my remarks to.

Q. All right. What was said by you at that time, do you recall? A. Yes, I complained about the Regal situation and one [1245] thing in particular was this credit card situation. We being an independent and were forbidden to advertise to the public that we were selling a major gasoline or Standard gasoline, and they had Standard gasoline and advertised it as a major brand and were taking all credit cards and that was having a terrific effect on our business.

Mr. Hilliard: I object and move to strike as irrelevant and immaterial, incompetent to any issue in the case. The time and place has not been specified.

The Court: The witness told us where the conversations took place. It will be overruled.

Q. (By Mr. Tilbury) Do you recall anything else that was said by yourself at this conversation you just related at that particular time and place? A. Well, Mr. Tilbury, we had lots of conversations about it. They were a sore spot with us. I wanted to work out a plan with Standard to accept all credit cards and they wouldn't let me do it.

Mr. Hilliard: Objection, and move to strike that, Your Honor, no showing in this case at all that Standard Oil Company has any right or authority or position to permit someone to accept credit cards of all types.

The Court: It will be overruled.

Mr. Hilliard: No claim in that regard either in the lawsuit. [1246] A. (Continuing) Then, in '56, in the year '56, we learned that after Regal came into the field that they were given subsidies through their own stations and to the Signal stations, and we asked, I asked them particular and insisted that they give us a subsidy the same as they give their own stations.

Mr. Hilliard: Object, your Honor. The fact of a request or a discussion about a subsidy would not be pertinent to any issue in this case.

The Court: Well, I can't tell from the witness' testimony here whether he is talking about the official stand of Standard or somebody else.

The Witness: Shall I answer it?

The Court: So you can tell us with whom you had these conversations.

A. (Continuing) I had my conversations with Mr. Johnsen, Mr. Cuyler. Mr. Johnsen was the President of the S.O. Company. Mr. Cuyler was the General Sales Manager of the Standard Oil. I had been with Mr. Vesper, who was the Executive Vice-President in charge of all Western marketing. I had it with Mr. McClanahan, who was the Vice-President of the Standard Oil Company of California.

The Court: The objection will be overruled.

Q. (By Mr. Tilbury) Now, Mr. Perkins, with respect to, leaving for a moment the subsidy program, with respect to [1247] Regal, did you have a conversation with Mr. Johnsen with respect to the presence of Regal stations?

Mr. Hilliard: I object. The conversations that were had in the presence of Regal were not at issue here.

The Court: Overruled.



A. (Continuing) I believe I had conversations with all of them with respect to Regal.

Q. (By Mr. Tilbury) Did Mr. Johnsen ever come to the Portland area at any time to visit this marketing situation?

A. Yes, he did.

Q. During the period I am now speaking of from '55 to '58? A. Yes, sir.

Q. Did you accompany him on any of his visits in the Portland area? A. I didn't personally accompany him to any of the stations or make any trips with him.

Q. All right. Do you know what his purpose was in coming to the Portland area? A. To look into the market conditions.

Q. All right. And while he was here, did you have occasion to discuss here in Portland or Vancouver, wherever the discussion took place, anything about the Regal? A. We discussed it in my office with Mr. Johnsen with reference to Regal, Signal subsidies and the general market conditions.

[1248] Q. All right. Now, did you make reference to any of the advertising being done at the Regal station in any of these conversations? A. We discussed it at great length and all phases of it.

Q. All right. Did you describe the signs that you have reference to earlier? A. And he—yes, sir, and he told me that he had seen it.

Q. All right. Did he make any other comment besides that? A. Oh, I can't tell you all the comments that he made, but we had continuous conversations about it.

1253 Q. (By Mr. Tilbury) Mr. Perkins, would you describe for us, please, the conversations you had with the Standard people; I am not asking you to repeat something you have already repeated, but anything else you haven't covered in respect to the subsidy program; you have already described with respect to Regal; I am asking about the subsidy program? A. You want me to state the conversations I had regarding subsidies?



Q. And only with the Standard people now, not with anyone else? A. We had a conversation with the Standard people with Mr. Johnsen and Mr. Vesper regarding subsidies while we were negotiating the 1956 contract.

Q. What was said by you and what was said by them, as you recall it? A. I stated to Mr. Vesper that we understand that they had been given some subsidies out there, and I asked that our contract be tied to Signal Oil so when they got subsidies we would get the same subsidies they got.

[1254] Mr. Hilliard: I move to strike—

The Witness: Mr. Vesper stated and he said there may have been some subsidies given, but he says, "We are not going to go into any subsidy program. We are not giving them now, and we do not intend to give them."

Mr. Hilliard: I move to strike this, Your Honor, on the grounds that it would be irrelevant and immaterial and incompetent, and also on the further ground that the same subject matter has already been testified to by this witness when he first took the stand.

The Court: Well, we have the contract in evidence now, and I will leave that in the record in connection with the negotiations leading up to the contract.

Q. (By Mr. Tilbury) Now, did Standard also indicate whether there was a subsidy program in effect or not? A. He said there was not any in effect at that time.

Mr. Hilliard: I object, Your Honor, and move to strike.

The Court: It will be overruled.

Mr. Hilliard: It is not relevant to any issue.

Q. (By Mr. Tilbury) Now, you are referring to a particular conversation at that time; right? A. Yes, sir.

Q. Was there another conversation at a later time dealing with the issuance of the subsidy between yourself and the officers of the Standard Oil Company of California? [1255] A. Yes, sir.

Q. Would you describe for us those conversations and identify the time and place, if you can, please. A. In the spring of '57. I can't tell you the exact day. But I went

to San Francisco and talked to them about this whole situation, and we explained to them that we couldn't live under the present circumstances, that they would have to give us subsidies. And they stated emphatically that they were not giving subsidies and they would not give subsidies.

Mr. Hilliard: Your Honor, I move—I object to this and move to strike it, and I don't believe under any theory of this case counsel can make any representation to the Court that this can be tied up as relevant and pertinent evidence. The issue here would be whether someone else received a more favorable price than the plaintiff did or accounted at a lower figure and whether that resulted in damage. The fact that a statement may have been made about it at one time or the other, in any event, would be irrelevant I submit, and all the plaintiff's objective is to establish the fact, not what was said or may not have been said on a given occasion. I think it is highly prejudicial to the defendant, and I don't believe under any theory that it could ever be connected up.

I move to strike it, Your Honor.

[1256] The Court: Well, of course, this evidence being offered on the other side probably would be objectionable so far as the plaintiff is concerned, and this being negative as to plaintiff's case. But if it was a matter of inducement for something that the plaintiff did thereafter in connection with its subsequent dealings under the contract, it would have some bearing.

Mr. Hilliard: Well, Your Honor, I think it is stated, the problem, and I don't believe this is a lawsuit based upon any type of inducement. It is not a misrepresentation case or it is not—

The Court: Well, if it isn't tied in as a matter of being inducement for something that the defendant did, it is beneficial to the defendant and doesn't hurt him.

Mr. Hilliard: Well, we definitely feel, Your Honor, that it is not beneficial but it is prejudicial, and we would urge,

if that is Your Honor's feeling, that it would not be permitted to come on the record on the grounds that I have stated.

The Court: Well, I don't want to anticipate something that I don't need to. What does the plaintiff contend for this negative evidence?

Mr. Tilbury: Well, Your Honor, it does reflect on the issue of credibility. It also reflects—I think we will develop evidence, and there has been evidence already—the [1257] existence of this program. And in that sense, it merely goes to background to show the relationship, the dealings, the manner in which statements were made over the years.

The Court: Under the basis that it tends to be evidence of prior inconsistent statements or something of that nature?

Mr. Tilbury: Yes, sir, among other things.

The Court: Well, possibly that might be admissible on rebuttal in the event there is some testimony on that side.

Well, it is in the record, it is negative. It is a disavowal of the officers of the defendant that there was any subsidies going on at that time. It is in the record, and I can't very well deal with it; and I will leave it there. It is of no import, members of the jury, unless there is some other evidence in the case to show that the plaintiffs made some reliance upon those statements of the officers of Standard.

I will leave it in on that basis.

Mr. Hilliard: Your Honor, so our position is clear, I would renew the motion to strike and urge the Court to instruct the jury to disregard this testimony.

The Court: I will leave the record the way it is now with leave for further request in connection with it as the case develops.

Q. (By Mr. Tilbury) Mr. Perkins, did you have any conversation—let's take the opposite side of the coin to avoid [1258] any objections. Did you have any conversations

with any of the Standard people at which they either did—well, let's say at which they said there was a subsidy program in existence? Did this come about at any time?

• • • • •

The Witness: Yes, sir.

Q. (By Mr. Tilbury) Can you identify the time and place, without going into conversation so that Mr. Hilliard can object if he wishes? The time and place of this, Mr. Perkins? Now, is my question clear? I am asking now of situations where they admitted, if they did, that there was a subsidy program.

• • • • •

The Witness: The time was in the summer of '57. The conversation was in the Standard Oil office—

Q. (By Mr. Tilbury) All right. Stop right there. A.—at San Francisco.

• • • • •

[1259] Q. (By Mr. Tilbury) Who was the Standard representative, or if there was more than one, please identify them? A. The representative that I talked to at that time was Mr. Johnsen.

Q. August Johnsen, I assume? A. Yes, sir.

Q. All right. Now, was there anyone else present from Standard at that time besides Mr. August Johnsen? A. I don't believe there was anybody else in his office at the time.

• • • • •

[1260] Q. (By Mr. Tilbury) What was said, Mr. Perkins, at that time? A. You mean as to subsidies?

Q. Yes, sir. A. There was a long conversation that lasted two days. But as to subsidies, he said that they were given some subsidies and they was taken under advisement of a way to work out a plan so we could participate in the subsidies.

• • • • •

[1261] Q. (By Mr. Tilbury) Now, were there other discussions of this sort that you have just described? I am not trying— A. About subsidies?

Q. Yes. I am not trying to take a positive rather than the negative route, of which they acknowledge that they did and there was a subsidy program. Were there any other conversations? A. Yes, there was another conversation.

Q. All right. Would you describe where and when that happened? A. That was in the fall of 1957.

Q. Where? A. And that was with Mr. Johnsen, and that was by telephone.

Q. Where were you and where was Mr. Johnsen? A. I was in my office, and he was in his office.

Q. You were in Vancouver and he was in San Francisco? A. Yes, sir.

Q. Would you tell us what was said?

Mr. Hilliard: Your Honor, again, I object to this. I think your Honor's prior ruling was on the basis that it may show some admission. But the fact of subsidy is the [1262] matter before the Court, and all of the documents and exhibits that have been filed, I think specifically Exhibit 81, shows the detail of subsidy. So it could not be offered as relevant evidence on some admission against interest as to the fact of the subsidy during this period. I again object on all the grounds stated to Your Honor, and that it merely would go to a question of credibility, if that were an issue in the case, and it is not at this point.

The Court: Well, this may or may not tend to corroborate some other evidence. I don't know. It will be for the jury. He may proceed, and the motion will be denied.

Mr. Tilbury: Perhaps I may save a little time. If the defendant is conceding at this time that there was a subsidy, we may be able to save this—

Mr. MacLaury: Well, Your Honor, we have never denied that there has been a price assistance program of the



Standard Oil Company to its dealers, and it has never been an issue in this case. I say it was irrelevant—

The Court: I think the area has been to persons and areas of which it was applicable. I think that seems to be the area.

Mr. MacLaury: There are questions of fact here, certainly, about the quantity of subsidy, and that is all spelled out in the documents and Exhibit 81. There is no question that Standard for many years has assisted its [1263] dealers in price war situations. We have never denied it.

Mr. Tilbury: Well, I can't quite accept that, because that is contrary to the evidence to say you never denied it, and it is contrary to the position that has been taken.

Q. (By Mr. Tilbury) Mr. Perkins, without going into all of this conversation, the one that you tell us about, tell us the one just about subsidies briefly. A. In this telephone conversation?

Q. Yes, sir. A. I told them what our condition was up here and we had to have help, and he says, "I know you do, and I'll send you up the forms. And you distribute the forms to your stations and have them take immediate readings, and when you assemble them all, get them all assembled, then send them to me and we'll pay you the subsidy."

[1264] Q. (By Mr. Tilbury) Now, Mr. Perkins, did you get these meter forms? A. I did.

Q. Did you distribute them to— A. I did.

Q. —accounts? All right. Did they keep meter readings? A. Yes, sir.

Q. What did you do with the meter readings if you got them back? A. We mailed them all to the Standard Oil Company.

Q. All right. Did you receive from Standard anything in the way of subsidy? A. We did.

Q. To what extent? A. On one account down at Albany, we received a small amount. I can't tell you the amount. Somewhere between sixteen and a hundred dollars. Down at Jefferson, we received a small amount. I think it was Jefferson or in that county. We received a small amount of a few dollars. I can't tell you how much. And as far as I know, that is all—all that we ever received from them in the way of [1265] subsidies.

. . . . .

[1272] Q. Now, had Mr. Fraser been receiving some kind of assistance prior to that time, if you know? A. From us?

Q. Yes. A. Yes, he had.

Q. What kind of adjustments had he been receiving? A. Well, we gave him a price adjustment and we had given him, waived rent, we made deliveries for him and anything else we could do to keep him operating.

. . . . .

[1275] Q. (By Mr. Tilbury) Mr. Perkins, could you tell us, please, the products that you obtained from the Standard Oil Company, were these products the same products that were being sold at Standard stations and Chevron stations during the period of our claim?

Mr. Hilliard: I object to the competency of this witness to testify to the product that was marketed in some other operation.

The Court: I think it would be more helpful if this witness would tell us the source of his supply, and the jury can determine.

Q. (By Mr. Tilbury) Mr. Perkins, would you do that, tell us the source of the supply? A. I was assured from the officials of the Standard Oil Company, Mr. Johnsen, Mr. Vesper, and all of them, that we had identically the same products as were sold to the Chevron and the Standard stations.

Q. All right. The question, though, related to the source, where did you get your products? A. We got our prod-

ucts from the Standard Oil Company at Willbridge. You are speaking of Vancouver now?

Q. Well, in that case. A. Or in Oregon—

[1278] Q. (By Mr. Tilbury) (Continuing) Which Standard Oil official do you have reference to, Mr. Perkins? A. I have reference to Mr. Johnsen.

Q. He would be head of the Jobber Department? A. Yes, sir.

Q. Now, what did he say with regard to the quality of the gasoline being sold at the Signal stations as compared with your quality, if anything? A. Well, Mr. Johnsen and Mr. Cuyler and Mr. Vesper and all of them told me that the gasoline that is sold at the Chevron and Standard stations was identically the same gasoline that we had purchased, that we purchased.

[1280] Q. (By Mr. Tilbury) I wasn't asking with relation to one station, Mr. Perkins; I am asking generally, had retail gasoline service stations in the Vancouver following the opening of the Regal station at 39th and Powell, would the price level at Vancouver go up or go down or did it remain constant; what was the situation? A. The price in the service stations in Vancouver after the entrance of Regal went down.

Q. All right. Could you give us some indication as to time as to when this happened? A. The 39th and Powell station was opened, if I remember right, in the fall of '56, 1956; and immediately or very shortly after their opening, the price in Vancouver went down.

Q. All right. Now, are you speaking in general now, or just in regard to a few stations? A. I am speaking in general.

Mr. Hilliard: May I ask, is that the major and minors?

Q. (By Mr. Tilbury) Is it both kinds that you are speaking of? A. I am speaking of all the stations.

Q. Majors as well as minor stations, is that correct?  
A. Yes, sir.

[1281] Q. All right. Now, can you tell me, Mr. Perkins, if you had occasion to observe the price conditions in Longview following the opening of the station at 39th and Powell at any time? A. The prices in Longview remained practically the same for about 30 days after Regal.

Q. And what happened? A. And then they went down.

Q. And how long did they remain down, or did they in fact— A. I think they are still down.

Q. All right.

Q. (By Mr. Tilbury) Did you have occasion to go to [1282] Centralia? A. Yes, sir.

Q. And would you tell us what the situation was there as you observed it following the opening of the Regal station at 39th and Powell? A. Well, I can't tie that to 39th and Powell because there was other factors at Centralia.

Q. All right. What other factors? A. A depressed market.

Q. (By Mr. Tilbury) Can you give us the time? A. We had a depressed market in Centralia. Well, we had little brush fires off and on, and we had a depressed market in '56 and '57, and I believe as of '55.

[1292] (The following proceedings were had out of the presence of the jury:)

The Court: Does counsel have a matter?

Mr. Mac Laury: Yes, just one short matter, Your Honor.

The Court will recall yesterday there was some testimony by plaintiff to the effect that he had conversations with certain employees of Standard and that these

employees had told the plaintiff during the period 1955 and '56 that Standard did not have a program of price assistance to its dealers. That testimony was admitted over the objections of the defendant.

Counsel for plaintiff—there was some surprise that there was an issue, that we made no issue over the question whether there was price assistance, and counsel for the defendants stated for the record that we had never contended that there was no price assistance program, and I would like to state for the record, Your Honor, that last July, in early July, under the affidavit of John M. McDonald, which was signed on the 1st day of July, defendant filed an interrogatory No. 2; answer to Interrogatory No. 2 to plaintiff's third set of interrogatories, and I would like to read that [1293] for the record.

Interrogatory subparagraph A reads: "Under what circumstances you assisted Chevron dealers during period of depressed retail prices from 1955 through 1958?" The answer: "When retail prices in a given locality decreased to a significant extent, Standard extended a temporary price allowance to all Chevron dealers alike within the locality affected."

And then (b) inquires: "Did you attempt in any way to see that they received a margin of some sort for the sale of their products?"

The answer: "Not a specific margin. During the period March, 1955, to December, 1957, when retail prices in a given locality charged by Chevron dealers' competitors decreased significantly below the prevailing retail price, a temporary price allowance was extended to all Chevron dealers alike within the locality affected. The allowance depended upon the margin between the prevailing retail price and Standard's posted tank truck price."

Now, Your Honor; so it is a matter of record that Standard has never taken the position in this lawsuit and has stated at the outset that a price assistance program was extended and we would urge, Your Honor, again to recon-



sider the ruling of the admissibility of that testimony and because in our view it can only have the effect of [1294] creating an air of hostility to the jury and prejudice, and we would ask the jury to ignore it and it is pertinent to no issue in this lawsuit.

The Court: The defendants' contention No. 5 responding further to Paragraph 2 of plaintiff's contentions—plaintiff's contention 2—now, first of all, defendants' contention 2, responding to paragraph 1 of plaintiff's contention is the unlawful discrimination. Defendant Standard contends that it did not discriminate in price between different purchasers of refined petroleum products of like grade and quantity within the meaning of Section 2a, et cetera.

Now, in order to substantiate plaintiff's contention 1, which in effect is denied by the defendant it is necessary for the plaintiff to prove by evidence that the defendant did unlawfully discriminate in the course of interstate commerce in the sale of its petroleum commodities of like grade and quantity by granting discount allowances, payment, services, facilities and rebates and lower prices to other purchasers.

Well, I don't see how, when you deny that contention you say that the plaintiff shouldn't be permitted to bring forward any evidence which tends to prove that contention.

Mr. MacLaury: Your Honor, my point is this, we have never denied and we have stated positively that we have a [1295] price assistance program to Chevron dealers. It is our position as set up in the contentions that Your Honor has just read that the price assistance never went to the extent that this would cause an actual price discrimination between plaintiff and the Chevron dealers.

Now, there is an issue of fact here as to the depth of that or the extent of the price assistance, but there is no question here before this Court as to whether or not assistance was in fact extended.

The Court: If that be the situation, what does the defendant tender as a stipulation as to subsidies they granted to competitors of Perkins?

Mr. MacLaury: Precisely as stated in our answer to Interrogatory No. 2 of plaintiff's third set, Your Honor, that we did have a price assistance program. There has never been any question, and our main objection is to bringing on testimony that Standard or any employee of Standard at any time denied it, because that creates in the courtroom the air that the employees of Standard lied to the plaintiff, and naturally people don't like liars, and that is going to create some prejudice.

[1298] Mr. Bonyhadi: I think the early denials of certain agents of the defendant as to the existence of the assistance program, while admitted, I think goes in part to the weight of the evidence and may tend to explain, perhaps less than total or complete proof by that matter of weight of the plaintiff in bringing forward with regard to each and every transaction Standard engaged in in the Pacific Northwest —

The Court: You know, an argument like that is just like saying put the harpoon in and then twist it.

Why isn't the harpoon enough? Why do you belabor your record over the objection of counsel when he has confessed it to you? That is the point.

Mr. Bonyhadi: I don't want to belabor it. I think any conversations that may have taken place between a [1299] responsible officer of Standard and a responsible plaintiff, forgetting now if it was Mr. Perkins himself or Perkins Oil of California—

Mr. Tilbury: Of Washington.

Mr. Bonyhadi: Relating to price subsidy during the period of the time of the contract would be relevant even though admitted now. I don't know if—we are not trying to prove malice obviously. This is a case whether either Standard violated the Act or didn't—

The Court: If you had intention violation involved, it would be highly pertinent.

Mr. MacLaury: As a practical question, there is no question in my mind when the jury goes out and determines the extent of the damages they determine the character of the defendant in a case like this and that is where the real damage can come.

The Court: I think possibly it is evidence that is error to have gone to the jury. I don't think it is reversible error or prejudicial error, but I think it is error and it doesn't help the plaintiff's case one iota—

[1311] The Court: Ladies and gentlemen of the jury, yesterday while Mr. Perkins was on the stand, there was some testimony given by Mr. Perkins concerning conversations, his version of conversations, had between himself and certain officers of the defendant Standard Oil Company; particularly, testimony to the effect that in these conversations, the officers, at times, the gentlemen named, denied that Standard Oil Company was giving any subsidy or price assistance to any of its marketers of its products. It is a matter of record in pretrial procedures and in the contentions of the pretrial order that the Standard Oil Company acknowledges that they did during period give certain price assistance and subsidies to various marketers of its products. That will be more specifically explained to you as a matter of record as the trial progresses.

Therefore, this oral testimony of Mr. Perkins concerning [1312] negative statements made by these gentlemen that he testified about tends to neither prove nor disprove any issue of fact that will ultimately be before you. It is stricken from the record. Disregard it at this time.

By Mr. Tilbury:

Q. Mr. Perkins, without trying to go over any of the ground that we went over yesterday or any time else, I will ask you, I believe you were indicating something about the Centralia area when we closed yesterday. I believe

you indicated that there were some price disturbances. Now, correct me if I am not stating this correctly. Were there some price disturbances in the Centralia area during our claim period? A. Yes, sir.

Q. All right. Now, Mr. Perkins, would you tell me what you did personally as a result of this, if it happened?

• • • • •  
The Witness: This was—I have in mind now the spring of 19—early in 1955. I went to Centralia in response to a call and made a—with by manager there, made a price survey of the territory, of the different stations. And I [1313] found a very depressed market, with price signs, and I instructed our manager there to lower his price to meet the price of Signal Oil Company and of Signal Gas and Oil Company.

• • • • •  
Q. (By Mr. Tilbury) I believe you used the term Signal Gas and Oil. Is that the correct name of the company?  
A. Signal Oil and Gas.

Q. All right. A. And Signal Oil.

Q. What, if anything, did you do as a result of this, besides making this survey in the Centralia area? A. We reduced our price to the operator there.

• • • • •  
[1314] Q. (By Mr. Tilbury) Well, what was done—well, all right. Would you comply with the term? What do you mean by the term “we” in this instance? A. That account there was served by the Perkins Oil Company of Washington, which I was President of. And I instructed him to reduce his price and that we would reduce our price to him.

• • • • •  
The Witness: That the Perkins Oil Company of Washington would reduce the price that we were charging him too so that he could meet the competition.

Q. (By Mr. Tilbury) Now—

Q. (By Mr. Tilbury) Who instructed him? Who in your organization instructed him to lower his price? A. I did personally.

[1315] Q. All right. Now, did you own the property there yourself? A. I did.

Mr. Hilliard: Your Honor, may I ask the witness a question or two on voir dire in aid of a motion?

The Court: You may.

Mr. Hilliard: All right. Now, it is a fact that you had no right—to your knowledge, you had no right or authority by law or otherwise to control the prices of Mr. Helgeson?

The Witness: I had no right to control the price of Mr. Helgeson—

Mr. Hilliard: Did you then in violation—

Mr. Tilbury: I object to counsel interrupting.

The Witness: —except in this way: That in our contract with the Standard, they reserved the right to control the price, and we had authority to meet—to meet [1316] competitive prices.

Mr. Hilliard: All right. Now, your instructions to Mr. Helgeson were to reduce his price?

The Witness: I told him that he could reduce his price, that we would reduce ours to him.

Mr. Hilliard: Well, now, Mr. Perkins, that was why I asked you. I want to understand. Did you tell Mr. Helgeson to reduce his price?

The Witness: I didn't force him to, nor did I tell him that he had to positively. I reduced—I reduced our price to him. He had made requests to reduce the price, and I agreed to it.

Q. (By Mr. Tilbury) Mr. Perkins, I will call your attention to Exhibit No. 2.

Mr. Tilbury: If that might be shown to the witness, which is the 1953 contract, I believe.

(Clerk hands witness exhibit.)



[1317] Q. (By Mr. Tilbury) Is that the 1953 contract between yourself and the Standard Oil Company of California? A. Yes, it is.

Q. Now, Mr. Perkins, I will ask, if you will, please, to turn to page 2 of that contract. Down in the last paragraph, which is paragraph number 9, would you read to the jury, please, that portion of that contract, paragraph 9.

A. You want me to read it?

Q. Yes, sir, please. A. "Products consigned hereunder shall be posted and sold by the consignee at the price posted or authorized by the Standard at the time and place of sale for the same or similar products and particular type of delivery, quantity, and class of sale involve."

[1318] Mr. Tilbury: All right. I would offer in evidence Exhibits 167 and 168. This is an amendment letter, I believe, to the 1953 agreement.

(Whereupon Plaintiff's Exhibits Nos. 167 and 168, Amendment Letters Dated August 8, 1955, were received in evidence.)

Q. (By Mr. Tilbury) All right. Now, Mr. Perkins, would you please turn to Exhibit 167 and read the contents of that exhibit for the jury, please. A. Read the whole letter?

Q. Yes. It is not too lengthy. A. The letter was headed by the Standard Oil Company, Portland, Oregon, August 8, 1955, to Lee G. Powell, Clyde A. Perkins, Harris Distributing Company, Harris Oil Company. 3756 N. E. Alameda Street, Portland, Oregon: "Reference is made to the consignment agreement between us dated April the 6th, 1958, as amended from time to time and more particularly to paragraph 5 of the amended letter thereof [1319] dated"—"dated, which authorizes you to sell stove and furnace oil to your heating oil distributors at the same prices as we would sell such products to our heating oil distributors."

"On obtaining prior approval from us, you may, in specific instances, sell furnace oil and stove oil to your heating oil distributors at two cents per gallon below the price we charge our heating oil distributors, selling such products under"—it is in parenthesis—"heating oil distributors selling such products under our brand name for the applicable product involved when in our opinion competitive conditions warrant such lower prices.

"Please signify your receipt of the foregoing by signing in the place provided below.

"Yours very truly, Standard Oil Company of California, by E. V. Burns. Signed, Lee G. Powell, C. A. Perkins, G. A. Harris, and Harris Oil Company by G. A. Harris.

[1320] Q. (By Mr. Tilbury) Would you identify Mr. Burns for us, please? A. Mr. Burns was the regional manager for the Oregon Division of the Standard Oil Company.

Q. All right, now, Mr. Perkins, I will hand you, or ask the bailiff to hand you, if you will, Exhibit No. 168.

(Whereupon the bailiff handed the document to the witness.)

Q. I would invite your attention to page 2, Paragraph 5 of that agreement.

First, will you give us the—well, this one has been received, too, I gather.

What is the date of that letter? A. August the 8th, 1955.

Q. To whom is it addressed? A. Lee G. Powell, Clyde A. Perkins, Harris Distributing Company, Harris Oil Company.

Q. Who wrote the letter? A. It is wrote by somebody in the Standard Oil Company, signed by E. V. Burns.

Q. That is the same Mr. Burns you identified for us in the last letter? A. Yes, sir.

Q. Would you please turn to page 2 and paragraph 5 in the middle of that page. Would you read for us the [1321] contents of paragraph 5? A. "Pursuant to the pro-

visions of paragraph 9 of the said consignment agreement, we hereby authorize you to sell, consigned stove oil and diesel furnace oils to your heating oil distributors at net prices not less than the net prices charged by us to our own heating oil distributors selling such products under our brand names. We shall keep you advised from time to time of any such schedule of prices to our heating oil distributors. If you fail to conform to this authorization, we shall in addition to any other rights have the right upon written notice given by us to you refuse each of the additional adjustments set forth in the paragraph 1 for stove oil and diesel oil by five-tenths of a cent per gallon."

Q. All right now, Mr. Perkins, would you tell me the way in which this agreement was carried out, to what extent were prices—how were prices set, we will say, in those stations where you obtained the products from Standard and they eventually reached the station? A. How were they set?

Q. Yes.

[1322] A. We had a general agreement on that. Standard gave us the authority in all of our stations to sell gasoline, that is our private brand gasoline, at not less than two cents per gallon below theirs, below their price at their Standard Oil stations.

Q. Now, would that include Chevron station?

[1323] Mr. Hilliard: Your Honor, this goes beyond what I thought the question was calling for. Now, it is bringing in some oral—apparently oral modification of the agreement. I gather if it was by agreement with Standard, it is contained in either the 1953 or the 1956 agreement.

The Court: I don't know from the witness' testimony on that.

Mr. Hilliard: I will object to the evidence.

The Court: Until that is developed—

Mr. Tilbury: How was this agreement—

Mr. Hilliard: Our objection is overruled?

The Court: For the moment, yes.

Q. (By Mr. Tilbury) Was this agreement in writing? How was it reached that you just testified to? A. That was. That deal was originated in 1945 orally.

Mr. Hilliard: I renew my objection, Your Honor, oral evidence. The two agreements between the parties covering the period of this lawsuit have now been received in evidence.

The Court: That would tend to go as to the application placed upon the contract by the parties, that being the theory. It will stay in the record.

Mr. Hilliard: As long as we understand, Your Honor, I understand he is claiming a separate oral agreement, some other oral agreement.

[1324] The Court: As I understand it, this is what he did and that is what the prices were that were charged. That is what he is telling the jury.

I will leave it in the record.

Q. (By Mr. Tilbury) Mr. Perkins, who were the participants in this oral discussion you referred to? A. Mr. Hargens, Mr. McClanahan, Mr. Cuyler, Mr. Robert Harris, Mr. Lee Powell, and myself.

Q. Where did it take place? A. In the Standard Oil office in San Francisco.

Q. Could you identify that with reference to the signing of the first agreement between yourself and the Standard Oil Company? A. By the signing of the first agreement?

Q. Yes, was it— A. What led up to that?

Q. No, I am not asking that. I am merely asking, can you identify the time of this discussion that you have testified to with reference to the signing or the preparation or the negotiation of the 1945 agreement? A. Yes, I can identify that. That was during the time of the negotiation.

Mr. Hilliard: I renew the objection and move to strike all of the testimony with reference to prior oral agreements. That would be merged in the written document.

[1325] The Court: I am somewhat at a loss. It is the



defendant's position that this testimony tends to impeach some term of the agreement or do I understand this to be something supplemental, in addition to that?

Mr. Hilliard: As we understand it, from the testimony, and this is all we know about it is from the testimony, it is a prior oral agreement which would be merged into writing, and so the written documents would speak for themselves and the written documents governing this period of the lawsuit have been received in evidence.

The Court: Well, I don't take it that the plaintiff contends that there was any modification of any of the terms of the agreement. This was just the application.

Mr. Tilbury: That is true.

The Court: That was made by the parties in the performance of the agreement.

Mr. Hilliard: He didn't say that, Your Honor. He said it was a prior oral agreement.

The Court: That is the construction I am going to leave on it at the moment until I am better advised.

Q. (By Mr. Tilbury) Mr. Perkins, was there any later reference to this two cent differential you referred to? A. Yes, there were many references to it at many times. We were always permitted to sell—I say myself or the Perkins Oil Company of Oregon or Perkins Oil Company of [1326] Washington—we were always permitted to sell not less than two cents below the Standard Oil's price and should we get below, should any of our dealers get out of line and sell for less than that, we were immediately informed of it and instructed to change it.

Q. (By Mr. Tilbury) Instructed to change what? A. To move it back up to the not less than two cents below the Standard Oil.

Q. All right now, Mr. Perkins, as far as the way this was carried out, were there situations when the difference between—I mean the selling price in the Champion stations



was closer than two cents to the Standard price or Chevron price? A. Oh, yes, when the price wars came on or the depressed market, we were unable to stay two cents below. Many times we had to even sell at the same price they were, and sometimes at a higher price.

[1340] Q. (By Mr. Tilbury) All right. Mr. Perkins—well, let me ask you this: Did the price disturbances in the Centralia [1341] area, were they of short or long duration or what was the fact?

Mr. Hilliard: May we have a time specification?

Q. (By Mr. Tilbury) During the claim period, 1955 through '58, which I thought I was trying to limit all these questions to that area. A. In 1955 and 1956 and 1957, there was continuous price disturbances in Centralia.

Q. All right. Did it go up and down to some extent, I mean, or was it always the same level or what was the fact? A. Well, it would be various. The price would go way down, and then it would come back a ways, and then it would go down, and it would keep breaking out all the time.

[1356] Q. (By Mr. Tilbury) Mr. Perkins, I will go to another area, if you don't mind. I would like to ask you with respect to the way in which or payment was made for the products that you obtained and were invoiced by Standard Oil Company; could you tell us how payment was made for those products?

[1357] A. Well, the papers were made from our office to the Standard Oil Company, and they were paid weekly. We paid cash for everything that we had bought the week before. I think the break-off date started on Friday, I believe, and all the merchandise that we had purchased up to that time we paid cash for it.

Q. (By Mr. Tilbury) Was it always paid by cash, check, whatever the case may be? A. Well, check. We consider that cash.

Q. All right. It was not carried forward from one week to the next? A. Never. Never.

[1358] Q. And who was billed, which entity in your organization was billed; who got the— A. I personally was billed.

Q. Was this true throughout the entire period? A. Throughout the entire period.

[1364] Q. (By Mr. Tilbury) Mr. Perkins, without going into all the chemistry in this industry, do petroleum products that have a tendency to be left alone always remain in the same quantity or will it change upwards or downwards? A. Gasoline will evaporate as time goes on.

Q. Could you give us some indication as to how much evaporation, without getting too technical? A. There seems to be a general rule on that that is [1365] accepted by the States. It's a half of one percent a month.

Mr. Hilliard: Your Honor, we would object and move to strike the testimony, because evaporation is not an issue in this case.

Mr. Tilbury: It is an issue.

The Court: It will be overruled.

Q. (By Mr. Tilbury) All right. Mr. Perkins, now, can you tell me, were you given credit by Standard for any—you personally, for any products that evaporated which you obtained from Standard after you received the products from their terminal? A. Never.

Mr. Hilliard: May I ask a question in aid of an objection, Your Honor?

The Court: You may.

Mr. Hilliard: Did you measure and submit claims for evaporation from the time that you received the products until you delivered to the corporation?

The Witness: No, sir.

Mr. Hilliard: You never then had any measurement of evaporation which you submitted to Standard Oil Company?

The Witness: No, sir.

Mr. Hilliard: I would move to strike the answer, Your Honor.

[1366] The Court: It will be denied.

. . . . .  
[1373] Q. Were there situations in those cases where you obtained products from Standard that the products were stolen— A. Yes.

Q. —by theft? Can you give us a specific illustration where this was the case? A. Yes. We had a large theft from a former manager that worked for us in Aberdeen, stoled—I say stoled—he was convicted and sent to the penitentiary.

Mr. MacLaury: Your Honor—

The Witness: In excess, I believe, of 100,000 gallons.

Q. (By Mr. Tilbury) When did this happen?

Mr. Hilliard: Your Honor, I object to this, because in his answer he has said “us”, and there has been no [1374] specification of what product he stole.

The Court: Well, we will depend upon him to supply it.

Q. (By Mr. Tilbury) Aberdeen, was that a station that was leased to Perkins Oil Company of Washington, if you recall? A. Yes.

[1375] Mr. Tilbury: All right.

Mr. Hilliard: We object to this, Your Honor. This is a product then in the possession of Perkins Oil Company of Washington and not this plaintiff and there is no claim of that claim properly before us.

The Court: It will be overruled.

Q. (By Mr. Tilbury) Was this a station, in this instance, of the Standard Oil Company that was sold to C. A. Perkins individually? A. Yes.

Q. Now, with respect to the 100,000 gallons or whatever the exact amount was, was your billing to Standard ad-

justed or change or modified because of the fact that some of the product had been stolen, as you have testified?

Mr. Hilliard: Same objection, not his product.

The Court: There is one element that I am certain the jury would be concerned about and that would be the time of this claimed loss product with reference to the time of Mr. Perkins' payment for it. It would have to be supplied before it would have any relevancy to it.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Could you identify the time of this theft in terms of the time that you obtained the products from Standard? Could you identify it that way? A. The product wasn't all stolen at one time. They were [1376] stole over a period of time and we paid for our products in the regular manner every Monday, we paid for the products that we purchased from Standard the week before, and he didn't take them all at one time. He would take two or three thousand, or four thousand gallons at a time and so it drifted along over quite a period of time.

Q. Did Standard give you, or for that matter, did Standard give the Perkins Oil Company of Washington any credit or adjustment or change your billing as a result of this theft that you have described in Aberdeen?

Mr. Hilliard: Objection, Your Honor, because the theft has not been specified in terms—

The Court: I will have to leave it to the jury to consider in light of all of the evidence.

The Witness: They did not give me any credit.

Q. (By Mr. Tilbury) Can you identify the time of that theft, the approximate date when this came to light? A. Well, it went over quite a period of time. '55, and I think it ran into '56.

Mr. Hilliard: May I ask a question in aid of an objection?

The Court: You may.

Mr. Hilliard: Mr. Perkins, did you submit a claim to Standard for this theft?

The Witness: No.

[1377] Mr. Hilliard: Did any one on behalf of the Perkins Oil Company of Washington submit a claim?

The Witness: No, sir.

Mr. Hilliard: I move to strike that again, Your Honor, a hypothetical situation, no claim having been made.

The Court: There is this much about it, members of the jury, if this be a situation and an incident at which the Standard Oil Company never heard of, there is nothing about it that they could be concerned with in any event.

You will have to determine from all of the evidence before you whether or not Standard Oil Company received any information concerning this incident or incidents with reference to the loss, and then in view of all the evidence and the ultimate instructions given to by the Court, you can determine whether or not that tends to bind Standard Oil in any of the claims.

Keep your minds open about it.

• • • • •  
[1437] Q. All right, now, Mr. Perkins, could you define for us what is meant by the term "stop prices?" A. A stop price in a contract?

Q. Yes. A. A stop price is a figure that is used when a company selling merchandise to another company reserves the right to stop deliveries or stop making sales to them when the [1438] price reaches that figure or less.

Q. Are these important in the industry?

Mr. Hilliard: Your Honor, I object on the grounds there is no issue of stop price in this case. I don't know if counsel plans to tie this in to something, but I don't know, it is not a contention in the lawsuit or an issue between the parties.

Mr. Tilbury: It is a contention. It has been from the beginning.

The Court: What do you claim for this, Mr. Tilbury?

Mr. Tilbury: Well, Your Honor, this stop price was a matter that put a definite floor under this operation. He could not go below these with negotiation with his customers. It is our position this became important because



other customers received stop prices that were set at lower levels.

The Court: I think that is all you need to show.

Mr. Tilbury: Well, all right.

Q. (By Mr. Tilbury) Mr. Perkins, so the record will be clear, without going into any of the other aspects, do you recall whether during the period of your relationship with Standard a level was reached which was down to the stop price level? A. I don't believe—I don't believe it ever did.

Q. All right, again, working out contracts—

[1439] Mr. Hilliard: I move to strike the reference to stop prices because it is an abstract question.

Mr. Tilbury: It is not abstract.

The Court: Now, the picture is completed; it shows that it doesn't apply at all, so there is no misunderstanding about it.

• • • • •  
Q. Can you tell me, Mr. Perkins, during the period that you were under—well, let's take during the period of this lawsuit so we don't get too far afield—was it necessary to paint your stations from time to time, retail stations that you owned? A. Oh, yes.

Q. Did you receive any allowance from the Standard Oil Company for that painting? A. Oh, no.

Q. Of any type? A. No.

Q. Do you know whether they in those situations where you supplied gas to other people as distinguished from a [1440] situation from where you owned the station, do you know if Standard in those instances paid that customer anything for his painting? A. Not to my knowledge.

Mr. Hilliard: I object to this because, as I understand the witness, at the most he would claim he only operated one station at Astoria for a period of time and certainly there is no issue in this case placing an obligation on Standard to paint stations of a corporation's customers. I don't think there has been any contention that we have—

• • • • •

Q. (By Mr. Tilbury) Mr. Perkins, did your station, that is, those where you owned the station, did they receive anything in the nature of a restroom allowance from the Standard Oil of California? [1441] A. No, sir.

Q. (By Mr. Tilbury) On the Champion stations which you owned, did they use the Standard credit cards? A. No, sir.

Q. Did you have any sort of discussion with the Standard officials regarding these credit cards? A. I did at one time.

Q. And when did this occur? A. After Regal came in the picture and were taking all credit cards, I discussed with them about me taking all credit cards.

Q. With whom did you discuss that? A. Mr. McClanahan.

Mr. Hilliard: May I make an inquiry. This would not seem relevant to any issue, and I am asking now if the charge is being made that someone else used Standard credit [1442] cards and Standard processed that service and wouldn't do it for Mr. Perkins?

The Court: There is evidence in the case that the plaintiff contends that at least there is that inference, the advertising of Regal.

Mr. Hilliard: May I ask a question or two on voir dire?

The Court: You may.

Mr. Hilliard: The evidence that I have heard, Mr. Perkins, is that Regal had a sign, "All major credit cards honored." Is that what you are talking about?

The Witness: Yes.

Mr. Hilliard: Now, there are many other rebrand stations during that period and minor brands that would post that same sign, wasn't there, that all major brand credit cards honored?

The Witness: I never knew of any other posting that sign.

Mr. Hilliard: So there will be no confusion or misleading here, you know that all that means is that if I drive into the

station with a major brand credit card where that advertisement is contained that that individual station will take a risk on me for personal credit? In other words, they will extend me credit because I am carrying a major brand credit card?

The Witness: That is right.

[1443] Mr. Hilliard: That could be Standard or Shell or Texaco or any of the major brand stations?

The Witness: That is right.

Mr. Hilliard: And you could do the same thing yourself at any retail location if you wanted to put the sign up there and say you honored major credit cards?

The Witness: That is exactly what we wanted to do but we were not permitted to do it.

Mr. Hilliard: Any provision in your contract on that subject?

The Witness: Any provision in the contract that we could not do that?

Mr. Hilliard: Or that you could, was it a subject of that contract of '53?

The Witness: No, it wasn't, because I never heard of a thing like that before at the time the contract was wrote.

Mr. Hilliard: You have seen that sign many times on many stations, haven't you?

The Witness: Well, I have lately, but I never seen it until the Regal came here. I never knew of anybody ever doing that.

Mr. Hilliard: And the reason you didn't want it is that it has always been your position, has it not—to any dealer of yours, that if the customer didn't have the price, cash price, for a gallon of gasoline, he shouldn't be [1444] driving a car, hasn't that been your position on it?

[1452] Mr. Hilliard: Your Honor, may I object to the form of that question because of "contract level". I don't understand what we are talking about.

The Court: I suppose he means the actual billing price.

Mr. Tilbury: Yes, and that related to it; and I have particular reference, Mr. Hilliard, to some of these amendment letters which have already been received in evidence such as those starting with Exhibit No. 170 and going through 203 and the like, those type of adjustments.

Mr. Hilliard: My point is I don't know whether he is talking about discount.

The Court: I think we are on an even keel.

Q. (By Mr. Tilbury) Now, were some of these adjustments, were there some adjustments that were given from time to time by Standard? A. To me?

Q. Yes. A. Yes, sir.

[1453] Q. All right. Now, were they different types; in other words, are there some that are long-term and some that are short-term? A. They would all begin with what we call a day-to-day.

Q. Would you explain what that is for us, please? A. Well, they would give me a letter saying that a day-to-day allowance is that you would receive a tenth of a cent more discount from day to day. It can be withdrawn any day that they want to. That is a day-to-day. A few was firmed up to last to the end of the contract period.

[1465] Cross-examination

By Mr. Hilliard:

[1467] Q. All right. Now, directing your attention to the question relating to a little of the background of this relationship with Standard which you have covered in your direct testimony, in 1945, as the evidence now shows, you and Powell and Harris entered into the agreement, the 1945 agreement, we will call it, with Standard Oil Company for a supply of gasoline? A. Yes, sir.

Q. Now, as I understand it, also, prior to that time, with the war on, there had been a real scarcity of gasoline? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. And then by the end of World War II your business had dwindled to almost nothing because of the amount of gasoline the government would allow you, the small amount the government would allow you? A. It had dwindled away down.

Q. And resulted in the closure of your stations which you later reopened, is that right? A. I don't know that we closed any stations. We had enough gas in the stations and we would give them an [1468] allotment of so many gallons each day, and, when they would sell that, why, they would close up for the balance of the day, or if it was only delivered twice a week, they could sell it out if they wanted to and then close up until they got another shipment. I suppose some of the operators did it one way and some the other.

Q. Well, I will ask you if this refreshes your memory, referring to your testimony in 331-59, page 59:

"Now then we started in, you see, our business had for a couple of years dwindled down to almost nothing because the amount of gasoline that the government would allow us to have is very small so then we worked hard to reopen our stations and to get our plants and everything going."

So you had closed down stations which it was necessary to try to get reopened? A. Might have closed some of them up entirely. I just don't recall now, but that could have been possible, yes.

Q. And then you had anticipated gas would get extremely plentiful after World War II, but instead of after World War II gasoline got very tight on the market, is that true? A. Yes.

Q. That continued, that tightness, and the availability of gasoline until after the Korean War, is that right? A. Well, the gasoline loosened up after World War II and [1469] we had a fair amount, not as much as we needed by



far, but during the—I think from about '47 to '51 it was quite tight.

Q. That would be taking us then to a period after the Korean War? A. Yes, '52 or '53, something like that.

Q. And then, of course, after that point the availability of gasoline was better; in other words, there was more gasoline available? A. Yes, sir.

[1485] Q. Can you tell me the motive at the time of this incorporation in your son executing a notarized statement reciting that you and he had previously conducted a co-partnership under the name of the Perkins Oil Company?

[1486] A. No, I can't, Mr. Hilliard, I didn't draw any of these papers. Our attorneys drew the whole thing and built up the whole thing; in fact, I would have to read all the papers even to know what is in all of them. But I can truthfully tell you that he was not a partner in any way, shape or form in my business.

Q. You know, of course, that just recently in this very trial the last few days your counsel put this in evidence on your behalf? A. I can't help what my counsel done, I am telling you the facts. It was our intentions, had been since he was a boy, to eventually he would take over all the business.

In the meantime our position in our family changed a little bit. We raised an orphan girl and a boy and Marvin Lennington was a nephew which we took into our family and then instead of having one boy in there to share into it, we had to arrange, we wanted to arrange for all of them to have something. And that was the reason that he got a part of the business.

Naturally we look forward for a long time of eventually him owning all of the business.

Q. Can you suggest to me any reason, business reason, or otherwise such a document as this would be executed? A. I don't understand why Mr. Snider used that language. I don't have the slightest idea.

[1487] Q. Do you understand why your son signed it?  
A. No, he probably signed it because his attorney told him to.

Q. I see. A. That is the reason he would sign it. He signed all of these papers; we signed them all when they were handed to us. In fact, Mr. Snider knew as much about our business practically as we did. He took care of my business for a number of years. He didn't know about the inside workings but the general ideas, we talked everything over with him.

Q. Did you look at this document before it was signed?  
A. I don't know as I ever did look at that document and I don't know as I had ever seen it until recently.

Q. So you— A. (Interposing) Does Allen claim now that he was a partner in my business?

Q. You have his notarized statement in front of you. Doesn't that read as though he claims he was a partner?  
A. Well, you might have called it a partner if you wanted to. He didn't own any part of the business at all. He shared in the profits of the business. That is exactly the way it was. My whole family worked in the business, everyone of us. My wife, my boy, and my nephew, and the two kids that we raised, and they all worked in the business.

Q. This Exhibit 424 I think you have testified about [1488] before, do you have that in your hands? It is a lease from yourself and Elizabeth Perkins to the Perkins Oil Company of Oregon. That covers, directing your attention to the second and third pages, four different—that covers four different pieces of property, is that right? A. Yes, four pieces of property.

Q. And that document is dated, the 1st day of December, 1952, signed by yourself and Elizabeth Perkins, parties of the first part? A. That is correct.

Q. And the Perkins Oil Company of Oregon, Inc., by W. M. Lennington, party of the second part? A. Yes, sir, that is right.

Q. Now, directing your attention to Exhibit 425 received in evidence, it has the caption, "Assignment," and recites,

"Whereas, C. A. and Elizabeth Perkins, husband and wife, parties of the first part, hold leases as more particularly hereinafter referred to and whereas said parties of the first part are conveying to the Perkins Oil Company of Oregon interest in oil business heretofore conducted by the parties of the first part as part interest in a partnership and now desire that all of said leases be transferred to said corporation," and then the transfer is recited, and is dated, "this 1st day of December, 1952," and signed "Clyde Perkins and Elizabeth Perkins, parties of the first part, [1489] Perkins Oil Company of Oregon, Inc., W. M. Lennington."

Now, that recitation in the second paragraph that you are transferring your interest—strike that. Let me read this again.

"Parties of the first part are conveying to the Perkins Oil Company of Oregon interest in oil business heretofore conducted by parties of the first part as part interest in a partnership." You signed this document now so you must have read that before you signed it? A. Yes, I know this document.

Q. And that recites that this property was part interest in an oil company partnership; isn't that the same partnership that is referred to by your son, Allen, in his bill of sale? A. Well, the partnership, if it was, if you might want to call it that or they might want to call it that, but we both had an interest in the profits which was built up in the company and I agreed to leave all of the profits that I had in the company to finance it and I assigned over to them my interest in the company, which was the 54 per cent that I had of the cash reserve in the company to them. Now, that is all that I signed over to them and any interest that I had in merchandise, the merchandise that I had and the equipment to the corporation.

Q. Well then, you prefaced that statement, Mr. Perkins, [1490] that I could call it a partnership if I wanted to. So the jury will understand, the document I am reading is

one signed by you where you call it a partnership, that is true, is it not? A. Mr. Hilliard, there was no partnership in that business. It was a family operation entirely, a family operation. I suppose I could have said that all of the kids had a partnership interest into it but as a matter of fact they had no interest at all in it except the interest that Allen devoted all of his time to it and he had an interest built up into the company from the residue, from the profit, of which he had not taken out from prior years.

Q. Did you have any special motive or reason for leaving in this description of interest in a partnership? A. Mr. Hilliard, when I signed that, I never gave it the least thought. In fact, I don't even know whether I read it when I signed it or not. It was there, Mr. Snider gave us all of the papers and I signed it.

Q. Mr. Perkins, there was no lawsuit problem at that time where the entity of a partnership or a corporation made any difference, isn't that the fact? A. That is right.

[1520] CLYDE A. PERKINS thereupon resumed the stand as a witness in his own behalf as plaintiff, and, having been previously duly sworn, was examined and testified further as follows:

Cross examination

By Mr. Hilliard:

[1552] Q. And you would still maintain, however, that as far as [1553] the practical operation, you just, in view of this source of income, rental income from the corporations, that you just forgot the corporations after the contract wasn't assigned to them, your contract with Standard?

[1554] A. After our contract wasn't assigned, we were so upset about it we just carried on with the corporation. I don't say we forgot it. We just carried on with our corporations, but as far as our, all of our plans were concerned, they were just forgotten and pushed by the wayside, and,



when Standard refused to recognize the corporation, then it was almost impossible for us to recognize it because I had to stay there and run it as an individual.

[1561] Q. (By Mr. Hilliard) All right. Is the "yes" that you transferred those products to Perkins Oil Company of Oregon and Perkins Oil Company of Washington? A. At the very beginning, yes.

Q. And did you transfer to those two corporations—well, strike that. At the beginning, I am talking about 1955 through 1957. A. From 1955 to 1957, they was supposed to pay me one half a cent a gallon brokerage.

Mr. Hilliard: I object and move to strike, Your Honor. That is not responsive to the question.

The Court: Well, your question is "yes" or "no", did he transfer at a mark-up or something of that nature.

Members of the jury, the witness has been asked to answer "yes" or "no", following which he could give an explanation. So disregard his statement that "they will allow me a certain fraction of a cent per gallon." Disregard it.

[1611] Q. They are not paid to the two dissolved corporations, are they? These two corporations were dissolved in 1962? A. Oh, yes, they were dissolved, yes.

[1637] Q. I asked Mr. Fraser questions about his, the price he paid you for gasoline, and a check of our, a check of your records which we have examined, after having been produced in Court show that through this claim period you sold Mr. Fraser at varying margins to yourself from one and a half cents to two, to sometimes slightly more per gallon on regular gasoline, and—

Mr. Tilbury: Your Honor, I object to counsel testifying. Now, if he wants to ask a question—

The Court: He may ask a leading question.



Mr. Tilbury: I don't object to that. I realize that he has a right to do that on cross examination. For the record, my own position is that I don't think he should give a flat statement. I think it should be in the form of a question.

The Court: Have you finished your question?

Mr. Hilliard: No, your Honor.

The Court: Go ahead and finish it.

Q. (By Mr. Hilliard) All right, to sort of refresh our memory, the record is showing that you sold to Mr. Fraser at [1638] this margin to yourself varying, as I have suggested to you, from a cent and a half to two and a half cents on occasion through the entire period of '55, '56, and '57 now, however, Mr. Fraser testified that you told him you sold gasoline to him during this period at your cost from Standard; now, what would be the basis of your making such a representation to Mr. Fraser?

Q. (By Mr. Hilliard) Did you make that representation to Mr. Fraser? A. If Mr. Fraser said that I did, I probably did. I don't think that he would tell a mistruth.

Q. What was the basis then of your making that representation? [1639] A. Sometimes we did sell to him for just right down what the gasoline cost us.

A. You understand that a cost to us, Mr. Hilliard, if I [1640] buy something for, say, for ten cents and if it cost me to run it through my, through my plant and through my box and through my office another cent and a half or two cents, then my cost is twelve cents.

Q. Did you— A. It isn't the cost that I pay the manufacturer at the point of receipt. It is the cost that I have in the product at the time that he takes it, that the buyer takes it from me. That is my cost, and I am sure that is what he meant.

[1642] Q. Well, as a matter of fact, then you are ready to now acknowledge that you did not sell to him at the price which you paid Standard? A. I acknowledge that I did not sell to him at the price that I paid Standard.

. . . . .

[1704] Q. (By Mr. Hilliard) You have testified, I believe, Mr. [1705] Perkins, that on your best recollection of your observation, Regal opened at 39th and Powell in October of 1956? A. In the late fall of 1956.

Q. Now, directing your attention specifically to the subject of price wars in Portland, it is true, is it not, that as far back as 1953 you had experienced a terrific price war in the Portland area? A. I can't say there was a terrific price war in Portland in 1953. There were brush fires around, what we term in the oil industry as brush fires where there would be a price war that would last for a few days or a week. Maybe it would last longer, and it would affect certain areas. I can't remember now in '53 what areas it affected.

Q. Let me direct your attention to your testimony in the case we tried here this fall, 331-59, sometimes referred to as the Yakima case. Your transcript on page 620, in response to questioning by Mr. Tilbury, your counsel, on line 6. Your statement: "'53 was—I can't tell you about the profit picture, but I will tell you that 1953 was a bad year. We had a terrific price war in the Portland-Roseburg-Medford area." Now, is it a fact that in 1953 then in those areas mentioned you had a terrific price war? A. That could have been possible. I don't say that it lasted forever. Those things break out and—and they can be real disastrous for a short time.

[1706] Q. Well, it isn't just possible. It is your statement under oath in Court, isn't it? A. Well, if I said that, that was to the best of my recollection at that time.

Q. All right. How about at this time; do you have the same recollection? A. Well, if I said that, no doubt that's exactly like it was.

. . . . .

Q. Well, how is your remembrance six months later? Is it the same? Do you remember that terrific price war?

A. Well, I know we had different price wars off and on, [1707] small ones, continuously. We've always, ever since I have been in the gasoline business in the last 35 years, we have had these flare-ups. But they didn't—they never lasted very long. Sometimes we would have them, they would last a month. Sometimes they'd only last a few days. Maybe they'd last a little longer.

Q. Mr. Perkins, isn't it a fact that throughout 1955 and '56, prior to Regal, you had depressed—you had a depressed retail gasoline market in this area? Now, isn't that really the truth? A. You said in 1955 and '56?

Q. Yes. A. In 1955 and '56, yes, we did. We had some—we had trouble in '55 and we had trouble in '56. We had some serious trouble in Centralia when the Signal Gas and Oil was selling down there. We had serious trouble in Centralia in 1955 when the price—retail price of gasoline got way down below—got below our tank wagon price.

Q. I am talking about Portland right now. A. Now, then, in the Portland area, I can't tell you how bad it was in 1955. I know we had price disturbances from time to time, but we never in my—in my lifetime in the gasoline business did we ever have a price disturbance like the one that we had after Regal entered the field.

• • • • •  
[1711] Q. (By Mr. Hilliard) Now, I am going to ask you if as an actual fact, Mr. Perkins, prior to May 24th, 1956, that a practice had developed in this city by marketers of gasoline products, of erecting movable signs and placing them at various locations on their premises and adjacent to the sidewalk areas and that the quality of the signs and the placement had been distracting to drivers of motor vehicles; there was poor quality of workmanship and constituted misrepresentation in the eye-catching appeal. That situation on retail price signs existed prior to May 24th, 1956, in the City of Portland, is that not right? A. Well,

this right here is an ordinance that was passed in Portland and I know nothing about the Portland ordinance at all.

Q. You know something about the signs. A. I don't live here or pay any attention to the [1712] ordinances over here because I don't do business in the City of Portland.

Q. You know about the price signs over here because you testified, you have described them. A. Well now, this right here is about removable signs sitting on the sidewalk.

Q. Now, you haven't answered my question yet, Mr. Perkins. A. Did you ask me a question?

Q. Yes. A. I am sorry.

Q. If there wasn't a very extensive use of these curb and sidewalk signs prior to May of 1956 in the City of Portland, to your personal knowledge? A. Mr. Hilliard, to my personal knowledge there was no relation between the amount of signs when this ordinance was drawn in May, the 24th, 1956, that there were on January the 1st, 1957.

Q. Mr. Perkins, I will ask you once more, prior to May of 1956 the practice had developed in the City of Portland of placing these curb signs in the area of retail establishments that constituted actually the eye-catching misrepresentation to the traveling public, and that was the condition in Portland prior to May of 1956? A. Well,—

Q. Do you agree with that, Mr. Perkins? [1713] A. No, I don't agree with it at all, because there have always been some price signs over here, not many. There have been odd signs, "We sell for less," or "A better deal here," or something like that, and they wouldn't be very attractive signs, I will agree with you on that, and if I remember right, all of the dealers got together and proposed this ordinance that they take—

Mr. Hilliard: I move—

The Witness: (Interposing)—that they take the signs down. The signs were sitting out on the curbs, and of course the City didn't want the signs on the curbs.

. . . . .

## [1787] Redirect Examination

By Mr. Tilbury:

• • • • •

[1911] Q. All right. Now, as far as—well, let me first ask you about that. Now, as far as Marine Terminals in Oregon or Washington during the period of our claim period, were there any terminals that were owned by any petroleum company other than a major, with the exception of the Time at Tacoma or Portland?

Mr. Hilliard: I object, Your Honor.

Q. (By Mr. Tilbury) If any?

[1912] Mr. Hilliard: There is no foundation to the question and no showing of any basis for knowledge of the ownership of the property.

The Court: Didn't he testify as to experience about developing a marine—

Mr. Tilbury: Yes, sir, he did.

The Court: Yes, he did.

Mr. Tilbury: His own.

Q. (By Mr. Tilbury) Are there any—

Mr. Hilliard: This is 1945, Your Honor.

• • • • •

[1913] The Witness: The Time Oil Company had a terminal here, and that's the only independent terminal in the northwest.

Mr. Hilliard: I move to strike, Your Honor; as irrelevant, immaterial and incompetent.

The Court: It will be overruled.

Q. (By Mr. Tilbury) Are there any independent refineries as such in the northwest? A. The Time Oil has a small refinery that makes only house brand gasoline in Tacoma, Washington.

Q. Are there any pipelines that come into this area? A. There is no pipelines.

Q. By independents is what I was referring to. A. By anybody, except—I'm speaking of the claim period.



Q. Yes, sir. A. There are one now, an Intrastate pipeline from Portland down, I believe, as far as Salem or Eugene.

Q. Is there one at Pasco? A. There is one to Pasco.

Mr. MacLaury: Is this within the claim period again now or not?

Mr. Tilbury: Well, I think so. I will ask him to be sure. I am not certain.

Q. (By Mr. Tilbury) Was there a pipeline in Pasco during the claim period? [1914] A. Yes, sir.

Q. Who owned that?

Mr. MacLaury: May we have a foundation as to his knowledge, Your Honor, before the witness answers? The source of his knowledge.

The Court: Yes, you may.

Mr. Tilbury: Go ahead.

Mr. Hilliard: Mr. Perkins, did you use pipeline in Pasco?

The Witness: No, sir.

Mr. Hilliard: Do you have any official connection with any entity that owns or operates that pipeline; that is, as an employee or an officer?

The Witness: Did you say that owns it or an employee?

Mr. Hilliard: That owns it. Are you an employee or an officer of the company or representative of the individual that owns the pipeline?

The Witness: No, sir.

. . . . .  
[1915] Q. (By Mr. Tilbury) Mr. Perkins, to your own personal [1916] knowledge, do you know of any situations where gasoline, either Ethyl or regular gasoline, has been brought into this area from points—and by this area, I now mean Portland or Vancouver—from points in California? By regular truck is what I am speaking of or tank truck and trailer. Not marine, but by— A. Truck and trailer?

Q. Yes. A. I know of no such instance.

[1917] Q. (By Mr. Tilbury) Now, do you know of any situations where gasoline has been brought into this area,

northern part of Oregon, Southern Washington, by means of rail transportation?

The Witness: I know of none.

Q. (By Mr. Tilbury) Is the normal way in which products come in by tanker; is the way most of the products come in? A. This is the way they all come in.

Q. Does the Standard Oil Company operate tankers, to your knowledge? A. Yes, sir.

[1918] Q. (By Mr. Tilbury) Have you personally observed tankers which bore the insignia of any other major oil company during the claim period? A. Yes, sir, I have.

Q. And have you seen the insignia of an independent company—

Mr. MacLaury: I object to the form of the question, Your Honor. It is speculative, an insignia on the tanker.

The Court: Well, it does pinpoint one type of vessel on the river from another type, but it doesn't suggest to him that it is an oil company vessel other than one of the Maru Japanese lines.

He can tell us what he saw.

Q. (By Mr. Tilbury) Do you recall seeing the insignia of any independent tankers on any of the ones you personally observed during the claim period? A. No independents that I know of bring any gasoline in and I never seen any.

Q. All right. Was there a time, Mr. Perkins, when there were some independent terminals in the area around Portland? A. Oh, yes.

Q. Was there a man by the name of Polsky that had a terminal in this area? A. Yes, sir.

[1919] Q. Did his operation continue or otherwise? A. No, he discontinued business.

Q. Did Sunset have one at one time? A. Yes, sir.

Q. What happened to it, if you know? A. They, the terminal was taken over by the Standard Oil of New York.

Q. Was there a Gage that operated at one time, operated a terminal? Was that the name of the terminal?

Mr. MacLaury: I object to these questions.

The Court: It is a leading question. I don't know how long it will take the witness to go through without some pinpointing.

Mr. MacLaury: It is way outside the scope of the cross-examination.

The Court: Well, he used a name which meant nothing to me. I don't know whether—it all goes to the area of what supply there was within the area and I have ruled that that seemed to be within the line of inquiry on cross-examination. So this is an expansion of it, and I think it would be proper, but I do feel—

Mr. Hilliard: For the record—

The Court: Pardon me?

Mr. Hilliard: I don't believe that I asked anything about supply on cross-examination.

[1920] The Court: You certainly went into the marine ports, where he got his supply.

Mr. Hilliard: No, Your Honor. I just, so the record will be clear and Your Honor not be misguided, so far as my position is concerned I did not make inquiry on those subjects on cross-examination. I merely state that for the record, Your Honor.

The Court: Very well. I am accepting your cross-examination as a whole, as I recall it, and that is what I can make my ruling on.

Q. (By Mr. Tilbury) Mr. Perkins, I don't mean to lead you—were there any other independent terminals; have there been in the last period of years in this area? I don't want to pinpoint the date because I would probably be leading, but have there been any other independent terminals besides that of Mr. Polsky that you mentioned and the one by Sunset? Were there or have there been others, independent terminals I am speaking of? A. No, that is all. That is all I know of, except the George Gage one.

You said during the claim period. He was beyond the claim period.

Q. All-right. He wasn't in operation? A. No, sir.

Q. And that terminal disappeared, did it, or what happened to it? [1921] A. Richfield taken it over.

Q. All right.

Mr. MacLaury: Your Honor, I wonder if this might be a proper time for a recess.

The Court: Yes, it is. I was waiting for a place to break and you made it.

You may take your recess, members of the jury.

(Whereupon the morning recess was taken, and the following proceedings were had out of the presence of the jury:)

The Court: Do you have something for the record?

Mr. MacLaury: Yes, Your Honor. I didn't want to suggest to the Court the reason for the recess. I had a purpose, and I would like to address myself to this last line of questioning. I believe it is highly prejudicial and has nothing to do with this lawsuit. I think counsel is attempting here to show a demise of the independent oil business in the Northwest in a manner that is highly questionable and it is highly prejudicial and has no connection with this lawsuit to ask what happened to that terminal, and Mr. Perkins should answer Richfield took it over—he is painting this picture, without foundation and knowledge of this witness—of major oil companies taking over the industry here in the Northwest. It can have no other effect than to be prejudicial and it is not material to this lawsuit. [1922] If he is attempting to set up the major companies on one hand gobbling up the independents on the other and it has nothing to do with this lawsuit.

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Mr. Tilbury: My only purpose, Your Honor, I think this is highly relevant and I am almost positive that defendant will no doubt move, as they—I would expect them to on a

directed verdict based on the effect I haven't shown an injury to competition or an injury to a competitor or a tendency to monopolize. This is my purpose in attempting to paint the background. We will have an expert witness who will then apply the specific facts. I have not asked him in terms of the statute, which I think I could not do with this witness, but I do think that I have, I must bring this evidence in. I think it is necessary in order to establish the case so the jury can place this in a proper framework. I do not think I am going into anything other than the things that are mandatory and must be brought out if I am to establish my case.

[1923] Mr. MacLaury: That is precisely my point. He is trying to show an injury to competition here as a result of what Union did with Sunset, what Richfield did with this other customer, and all of these other oil companies in this area. The question is, was there an injury to competition as a result of the specific price discrimination charged and not as a result of these various mergers with the other oil companies. That is what I am concerned about.

The Court: The causation is not related at all, that is what bothers me about it.

. . . . .

[1924] Mr. Tilbury: Yes. I am merely attempting to show that during the claim period by this time the alternatives had no longer existed. That this was—

[1925] The Court: That doesn't mean the situation that Standard is going to claim existed in the claim period. Now, that is the point. The Court is not being critical in any statements it is making. It is analyzing what the defendants' position is.

I used the expression the other day somewhat in the vernacular, that why twist the harpoon, not intimating there is any harpoon, and that is what this type of question is.

Mr. Tilbury. Well,—



The Court: It creates something bad in the jury's mind, a bad situation that has got nothing to do with it. In fact, it was Richfield that did the bad thing of taking them over.

Mr. Tilbury: I am not saying that it was Standard Oil Company that took Mr. Gage—

The Court: That is the reason why you get this type of an objection, is because under the claim it is prejudicial, that it creates something evil from the action of the big producers. I am not saying they are getting that reaction from it, I don't know, but I say that it certainly gives ground to complain that it does.

When the jury comes back, I shall, if I can innocuously, tell them to disregard that. That is the only way I know how to protect your record, because it gives them something to holler about.

[1947] Q. (By Mr. Tilbury) In regard to the 1956 contract, would you tell us whether it was discussed at that time? A. It was discussed during the '53 and '56 contract.

Q. All right. Now, what was said?

Mr. Hilliard: I will object, Your Honor, the contracts are in evidence. No ambiguity, no contention of ambiguity, and the contract speaks for itself. Each contract speaks for itself.

The Court: For orientation, what area are you developing?

Mr. Tilbury: The contract uses the language, "Best efforts" on paragraph 7 of both of these contracts, and I am merely asking this witness if Standard identified this term of its contract, that is, whether any explanation was given.

The Court: You may develop that.

[1948] Mr. Hilliard: We have an objection overruled on that?

The Court: Right.

The Witness: Well, I won't tell you about all that led up to the conversations but the essence of this, I said to them, "How do you expect me to sell all of this gasoline that I have contracted for and to fulfill this contract when you won't let me take on this account or that account or some other account and you have"—

Mr. Hilliard: (Interposing) Excuse me, Mr. Perkins. This answer is broad in scope and is it not going to any definition or explanation of the term "best efforts," although we think that that could not be received in evidence. That was Your Honor's ruling, that testimony on the best efforts—

The Court: It is testimony as to the meaning; the application and the extent that the parties placed to it by what they said or did about it.

To that extent, why, it would have some probative value; [1949] to determine whether or not the contract was performed by either of the parties as distinguished from what their intent was in executing it. It is what they did under it. In that regard, why it would be permissible and it would be permissible to show any directions that the Standard placed upon Perkins in connection with the performance of this contract in their interpretation of it.

Those are areas of proper interrogation. I don't know if we are heading in those areas or not.

Mr. Hilliard: Well, so I understand, we are talking about the '53 contract, we are not then admitting it in terms of negotiations that led up to the term being in there, but it is conversations after the contract was in effect?

The Court: That is what he was telling us about and about the '56 contract.

Mr. Hilliard: May we have our same objection, Your Honor.

The Court: It only goes to actions done and said by the parties with reference to the various accounts. I will permit him to inquire.

The Witness: Shall I go ahead?

Q. (By Mr. Tilbury) I believe you may. A. And I stated to them, I said, "How do you expect me to fulfill

my obligation and my contract that I have agreed to [1950] purchase so many gallons of gasoline when you continuously throw roadblocks in my way? And if you continue to throw them in my way and I should fall below my sixty per cent, you could automatically cancel my contract and I would be out of business and might be subject to a lawsuit."

Mr. Hilliard: I object and move to strike, Your Honor. This testimony has nothing to do with any controversy under the Robinson-Patman Act here.

The Court: That is what the witness said he confronted them with. Let's see what they confronted him with and then I can determine.

Mr. Hilliard: You are overruling my objection?

The Court: At the moment, yes.

The Witness: Mr. Johnsen's answer to me was always the same answer. "Well, we will go along and see how the thing works out and see what we can do about it, see if we can't get you some more territory or get you another account or something."

Mr. Hilliard: In respect to this entire line, I move to strike this entire line of testimony because it in no way aids in the purpose of which it was purportedly offered, related to the term of "best efforts."

The Court: What do you claim for it, Mr. Tilbury?

Mr. Tilbury: Your Honor, it merely shows the construction placed on this by the Standard Oil Company and I— [1951] The Court: The end result is that nothing was done about it.

Mr. Tilbury: Apparently that is it.

The Court: That was just a matter of complaints and countercomplaints during the course of the terms of the contract. It has nothing to do with any of the issues before us whatsoever. Disregard it, members of the jury.

[2128] Further Direct Examination

By Mr. Tilbury:

[2138] Q. (By Mr. Tilbury) Mr. Perkins, as long as you have those documents, let me ask you about another figure that appears, and that is if you will turn to the same page I think you have before you almost, which appears to be the second page of Exhibit A on Exhibit 2, the 1953 contract; now, at the bottom of that page, are there stop prices that appear? A. Yes, sir.

Q. Would you give us, please, the stop prices as they pertain to you during those years in question on ethyl and regular gasoline?

Mr. Hilliard: Your Honor, we have been all through this; and after I examined the witness on voir dire on this subject, it developed that stop prices were never reached in this contract, and that really was not relevant to the claim.

Mr. Tilbury: Well, stop prices were always a problem. [2139] They are important. They have restricted this man from dealing as against the Signal Oil and Gas Company.

Mr. McLaury: How could they.

Mr. Tilbury: That is not the point. You can't deal in the future if you know that you are going to be blocked at a certain level, to the same extent that somebody who has a lower price.

The Court: May I have the question?

(Whereupon, the Court Reporter read the pending question.)

The Court: You may give that figure.

A. The stop price on first brand, that is the price which they refused to sell us gasoline should the price go down as low as 12 cents per gallon on ethyl or first grade, and regular or second grade 10 cents per gallon on gasoline. In other words, when gasoline went down to that price, they were not obligated to make deliveries.

The Court: Well, wait a minute.

Q. (By Mr. Tilbury) Would you read—you have page 2 of Exhibit A. I am just asking you for the figures, and



we had better not go into other areas at this time, the stop prices at Willbridge ex all taxes. A. Yes, that is ex all taxes.

Q. What is it for ethyl and what is it for regular, please?

A. Ex all taxes per gallon is 12 cents per gallon for [2140] ethyl or first grade and 10 cents for regular or second grade, ex all taxes.

Mr. Hilliard: May I ask the witness a question?

The Court: Yes, you may.

Mr. Hilliard: I don't know what he is reading from.

Mr. Tilbury: Well, that is not different from mine.

The Witness: Maybe I am reading the wrong thing.

Mr. Tilbury: Do you have the '53 or '56.

The Witness: I am reading from the '56.

Mr. Tilbury: Oh, well, no wonder. Excuse me. If I might just turn to this. Now, look at Exhibit A on '53, the next page at the bottom of the page.

The Witness: Yes.

Q. (By Mr. Tilbury) Now, would you read for us again from Exhibit 2, at this time the stop price on ethyl and the stop on regular? A. You want me to read the paragraph preceding it?

Q. I don't think it is necessary for our present purposes; it will be in evidence anyway; just those two figures? A. At Willbridge, when the price of gasoline at Willbridge ex all taxes reaches a price of 11 cents per gallon on ethyl and 9½ cents per gallon on regular, then they would not be required to deliver gasoline.

Q. All right. Now, would you look at the Signal Oil and Gas contract and read for us the stop prices that apply to [2141] Willbridge; there are some California points which I don't think we need to read.

Mr. Hilliard: What page are we on?

Mr. Tilbury: This would be on page 3 of the exhibit which used to be 1007 and now 321, and this would be paragraph 5B, the second part of that paragraph.

Q. (By Mr. Tilbury) Now, would you read the stop prices that appear for Willbridge?



Mr. Hilliard: Your Honor, may we have an objection as to relevancy. This is not relevant or competent to any issued in this case. There is no claim based on stop prices in this lawsuit.

Mr. Tilbury: I have always made a claim on stop prices. The Court: He may read the figure.

A. The stop price on the Signal Oil and Gas contract at Willbridge or Point Wells—Point Wells is in Seattle—on first brand or ethyl is  $5\frac{1}{2}$  cents a gallon; and on second brand is 5 cents a gallon.

[2206] Q. (By Mr. Tilbury) Mr. Perkins, did you have an opportunity then to look at the exhibits that you have inside that envelope without asking me the contents of the envelope? A. Yes, sir.

Q. Are you familiar with those locations that are shown there? A. Yes, sir.

Q. And are the locations which are shown physically, were they similar to the way in which the various stations—I had better not say what they are. It is hard to express this. As far as the physical appearance, was the physical appearance as shown in this exhibit, was it similar to the appearance at the time that you saw it during the claim period; I realize there are probably some that are for other locations; has the physical appearance changed? A. As far as I can recognize them, now, they are probably the same.

[2207] Q. All right. A. They might be some changes.

Q. All right. Would the general appearance be the same? A. Yes, the general appearance is the same.

Q. All right. The same sort of— A. Operation.

Q. All right. And are there some that were in operation that you see in that group of exhibits during the claim period? A. There is—there are three here that was during the claim period.

Q. All right.

Mr. Tilbury: Your Honor, we would offer in evidence the contents which I believe the defendant has seen. They

were previously marked and were the subject matter of an offer in the prior proceedings.

Mr. Hilliard: Excuse me.

Mr. Tilbury: That is all I have.

Mr. Hilliard: I am not sure that I have an objection, your Honor. Maybe counsel could tell us the purpose of the offer and also the date that the photographs were taken.

Mr. Tilbury: The photographs were taken fairly recently. They were taken this summer, I believe, and they were taken by Photo Art Studio. They were not taken by either the plaintiff or any person connected with the [2208] plaintiff, and they merely show a general indication of the way in which the stations appear during the claims period. I realize there are maybe some changes, but I don't think they are too material changes.

Mr. Hilliard: The general representations then would be the same now at the time of the pictures as the time of the claim period, the general conditions.

[2209] Mr. Tilbury: I think they are similar or substantially similar, yes.

Mr. Hilliard: So long as there isn't some particular sign for which he is claiming is identical, I can see no reason that we would object, Your Honor. But I haven't looked at them again since the last trial, but as long as the general representation—

The Court: Well, I assume then that these are pictures of installations that were in existence during the claim period; is that right?

Mr. Tilbury: Your Honor, to be quite frank, there are, I think, only three that were in existence during the claim period. There are some others that have come into existence subsequent to that time, and separate—

Mr. Hilliard: Well, I think if he limits his offer to those that were in existence in the claim period—

Mr. Tilbury: I can do that, yes.

The Court: With the understanding that whether or not there has been any changes since that time on the date of

the picture will depend upon all the evidence that is eventually given to the witnesses that refer to them. Is that your intention?

Mr. Tilbury: Yes, sir, that is right.

The Court: Well, then, we will have them received on that basis.

[2210] (Whereupon Plaintiff's Exhibits 106-A & B, Photographs, were received in evidence.)

[2221] (Plaintiff's Exhibit No. 106C, being a photograph of the Regal Station located at 39th and Powell Boulevard, was received in evidence.)

Mr. Tilbury: The station, Exhibit marked 106D, is the station at 250 North Broadway, sometimes referred to as Broadway and Wheeler or Broadway and Weidler.

The Court: Any objection?

Mr. Hilliard: No, Your Honor.

The Court: It will be received.

(Plaintiff's Exhibit No. 106D, being a [2222] photograph of a Regal Station located at 250 North Broadway, was received in evidence.)

Mr. Tilbury: The next one, Your Honor, is 106E, the last one, which is a station marked on the back at 420 Southeast 122nd.

Incidentally, the date and place and time are specified by the photographer.

This one was taken on July 15th, 1963, this summer, at 11:00 a.m. by Thomas Bessler of Photo-Art Commercial Studios.

Mr. Hilliard: May I ask one question of the witness, Your Honor, in connection with these?

The Court: You may.

Mr. Hilliard: Are these pictures that you have looked at and identified by these numbers just recited, Mr. Perkins, are they substantially the same as the conditions at the

stations during the claim period? In other words, are the conditions reflected in the photographs—

The Witness: I would say substantially. If I would have drove by them then and drove by them now, I would recognize the station.

Mr. Hilliard: I have no objection.

The Court: They will be received.

(Plaintiff's Exhibit No. 106E, being a photograph of a Regal Station located [2223] at 420 Southeast 122nd, was received in evidence.)

Mr. Tilbury: There are two additional ones, Your Honor, which were marked as exhibits but which do not apply and were not in operation, as I understand it, during the claim period. One at North Interstate, that is marked Plaintiff's Exhibit 106B, and the other one 106A is the station at 11 Northwest 21st, and this is marked 106A. Neither of these stations were in operation.

I will withdraw them voluntarily unless the defendant wants to put them in.

Mr. MacLaury: May we see them?

Mr. Tilbury: Oh, surely.

Mr. MacLaury: Do we have a date when these stations were opened?

Mr. Tilbury: That was identified in Mr. Shepard's deposition and he had a specific time. I am quite sure the last two were outside our claim period.

Mr. MacLaury: These stations were open some time after November, 1957?

Mr. Tilbury: Yes, I am sure.

Mr. MacLaury: Sometime during the year '58 or '59 they were opened?

Mr. Tilbury: Yes, I am quite sure. Mr. Shepard's deposition would reflect that. I can find that, if you wish. [2224] Mr. Hilliard: Well, we would have no objection to this coming in, Your Honor, with this explanation, just a part of the total picture.



The Court: The numbers A and B, they will be received.

(Plaintiff's Exhibit No. 106A, being a photograph of a Regal Station located at 11 Northwest 21st Avenue, and Plaintiff's Exhibit No. 106B, being a photograph of a Regal Station located at North Interstate, were received in evidence.)

Mr. Hilliard: May I ask Mr. Perkins—those last two, Mr. Perkins, in North Portland, and the other location—if he could be handed those—those were some time after December of '57 that they were opened?

(Whereupon the Clerk handed the photographs to the witness.)

Mr. Tilbury: I will be glad to concede, if it will help. I am sure they were.

[2291]

Maxine Buddy Ross

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows.

Direct Examination

By Mr. Tilbury:

Q. Mrs. Ross, would you state your name for the record, please? A. Maxine Buddy Ross.

Q. Where do you live, Mrs. Ross? A. 5218 Northeast 72nd Avenue, in Vancouver, Washington.

Q. Are you employed at the present time? A. Yes, I am.

[2292] Q. What kind of occupation do you follow? A. I am bookkeeper and executive secretary for Clyde Perkins.

Q. Are you employed strictly by Clyde Perkins? A. By the family, yes.



Q. All right. How long have you been working for them? A. I have been working for Mr. Perkins for over thirty years.

. . . . .

[2488]

Vernon Arthur Mund

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hall:

Q. Dr. Mund, would you restate your name in case any juror didn't hear it? A. My name is Vernon, V-e-r-n-o-n, Arthur Mund, M-u-n-d.

Q. Where do you reside, Dr. Mund? A. I reside in Seattle, Washington.

Q. What is your profession? A. I am a professor of economics. I am an economist.

Q. At what institution? A. I am a professor at the University of Washington in Seattle.

. . . . .

[2498] Q. (By Mr. Hall) Yes. Was there a discussion in masquerade of monopoly in one of your writings on the petroleum industry? A. The book, "The Masquerade of Monopoly" was written by a former professor of mine at Princeton.

Q. Oh, I'm sorry. A. I was employed in 1929 as his research assistant to help him write this book.

Q. I see. A. And in this book which I helped him write, he had a detailed analysis of the Standard Oil of New Jersey case and of business practices in the oil industry we will say up until about 1920.

Q. I see. A. In that particular book I made quite a detailed study of the practice of refusal to sell in the oil industry in 1956 and '57 and as Economist for the Senate

Small Business Committee. I was given the opportunity, you see, to have access to records in the Federal Trade Commission and the [2499] Department of Justice in a confidential way, never to reveal names of complainants, or to pinpoint the finger at the person doing the practice, but, nevertheless, to study the practice. The practice of major oil companies to refuse to sell gasoline in particular and in some cases heating oil to independent small businessmen; and so indeed it came from throughout the United States, the Pacific Northwest, the Pacific Coast and throughout the United States, because all these complaints were centralized in Washington, D. C. in the Department of Justice Federal Trade Commission; and my studies on this subject are published. I have them in my briefcase, and gasoline is identified in these studies as one commodity. [2500] Mr. Hall: Well, Your Honor, I think the witness is testifying as to his experience, need not at this stage come to any conclusions of the studies.

The Court: He hasn't come to any conclusions with reference to this case. He is just telling of his work product in connection with other matters in his experience with it. You may continue.

The Witness: I was just saying that in my studies which are published, gasoline is identified as one of many commodities or of several commodities in which refusal to sell was then practiced. Then—

Q. (By Mr. Hall) Well, Dr. Mund—pardon me. A. Then further, and finally, in my work under the Ford Foundation grant to study identical prices, here again I had access to Government data in the Department of Justice, and I found under the law any Federal agency finding that it has identical prices when it buys products and believing that there is an anti-trust violation has to report that fact to the Department of Justice. And when I was working with that in 1958, I found 10,000 reports in the Government office on identical bidding. Ten thousand. You can imagine how long it takes to go over 10,000

reports. In these 10,000 reports, I found a number bearing on gasoline, and this is a matter of record because some of those reports were subsequently published by the Department of Justice, so it is a matter of [2501] record. It isn't my word alone.

Q. I might now reask you that question. As a result of your studies in the petroleum industry, did you come to any conclusions as to the existence of an open market in that industry?

Mr. MacLaury: Well, Your Honor, I don't think that the open market has any relevancy or materiality. I object to it.

The Court: Yes. We are dealing with theories of economics in the business, and this witness can explain to the jury in this realm of the science his own conclusions that he reached generally. He may continue.

The Witness: On the basis of my studies and my examination of complaints filed with the Federal Trade Commission of the Department of Justice, I came to the conclusion that there is no genuinely free and open market in the sale of gasoline in particular at the primary and secondary wholesale levels, because the evidence indicates that anyone really isn't free to go and buy what he wants on the same terms and conditions available to anybody else or available to other people who are, in fact, buying. The proof of that statement is simply the fact that all these people complained that they couldn't buy. The evidence that they couldn't buy. Then when you go one step further and look at the sale of gasoline by the major companies, you find that the sales [2502] to Government agencies in particular, the bids are identical, which means that it is not an open market—an open, competitive market because when you build a house and involve bids for contracts or give a variety of bids, they compete and try to get the business. When they try to get one, it is a case of absence of competition.

Mr. MacLaury: Your Honor, I suggest that Dr. Mund is going beyond the realm of the question.

The Court: The question is dealing with open markets.

Mr. MacLaury: And I further object, Your Honor, on the ground that identical bidding and parallel pricing is not part and has no materiality to the lawsuit here in Court.

The Court: It isn't pinpointed—

Mr. MacLaury: Very well.

The Court: —to this litigation, members of the jury, in this answer and question that is being given to you now. This is just in the realm of the science itself and of the Doctor's experience that he has gained through his investigation of the matter and what theories he as an economist has developed. They are generalities.

. . . . .

[2506] Q. (By Mr. Hall) Dr. Mund, what is the general definition of the term "price discrimination"?

Mr. MacLaury: Your Honor, I would object to this term. That calls for the legal conclusion of the witness and invades the province of the Court.

The Court: No, I think that we are entitled to have an area of communication as distinguished from whatever the Court might determine by way of matter of the law the statutory meaning of it. But in the field of economics and in the business, we can all be advised as to what is a general acceptable meaning of price discrimination.

The Witness: The term price discrimination went from popular use into economics, business, and the law. And Webster's Unabridged Dictionary describes the word generally as making a distinction, making an unfair or injurious distinction. This is discrimination. In relation to price, it would mean making a difference in price, charging some people a higher price, others a lower price, for the same class of goods under substantially the same conditions. This term, from general language, went into law and economics primarily in this country during the period 1830 to 1900 with the development of railroads, and the first laws in Court decisions on the term grew out of rail-



road cases, [2507] situations in which a railroad would charge some people a higher rate than others or a rate for—a higher rate for a shorter haul than for a longer haul. The first law we had on rate or price discrimination was found in the Interstate Commerce Act of 1887 in which Congress sought to curb this practice. And so the term, in my opinion, is one today which is essentially the same. Economics or the law, the definitions are the same according to all my study.

[2508] Q. (By Mr. Hall) Does price discrimination take varying forms? A. Yes, it does. Price discrimination takes some three forms.

In the first place, experience shows as business practice it may be practiced between persons. A situation which a supplier charges some people a higher price and some people a lower price. In price discrimination there are always two prices, a higher price and a lower price, for the same class of goods under substantially the same conditions and discrimination is contrasted with competition in an open market where all customers buy at the same price. It is the reverse or the negative of competition. Discrimination and competition are mutually opposite.

Discriminations can take place as between persons; it can take place as between places. For example, a large bakery operating in Portland might charge a high price for bread in Portland and then a low price in Eugene, so that it got a higher price on sales in Portland than it netted on sales in Eugene. That would be place discrimination, you see. That is commonly practiced. And then there is a third type of discrimination in which a large supplier who has the power to use this practice discriminates between goods and uses.

For example, there is a case pending today involving the [2509] Borden Milk Company, in which the Borden Milk Company has been found by the Federal Trade Commission guilty of selling its blue label milk at a high price and the same milk in another can with a different label a much



lower price, and so they are getting two prices for the same milk under substantially the same conditions. That is the discrimination as to uses or kinds of goods.

So you have three kinds, as to places, as to persons, and as to kinds of goods.

Q. Can subsidies be a form of price discrimination?

Mr. MacLaury: I will object to this question on the grounds it calls for a legal conclusion as has been defined by the Court in many cases.

The Court: I grant you it is a borderline, but, first of all, I think you used a technical word there that I think that might have an economic meaning in the science, and have the witness explain that.

Q. (By Mr. Hall) Dr. Mund, I am asking you as an economist whether subsidies can be a form of price discrimination?

Mr. MacLaury: I object to the form of the question.

The Court: What I had in mind, he might explain to the jury his concepts and area of communication; what is a subsidy.

Mr. Hall: All right.

The Witness: The term "a subsidy" comes from—

[2510] Mr. MacLaury: Excuse me for interrupting, but I want to protect my record, Mr. Mund.

The Witness: That is all right.

Mr. MacLaury: I would like to repeat my former objection to the former question. It calls for a legal conclusion.

The Court: Court and counsel have been using the word "subsidy" throughout the trial, and it will give us an area of communication if we understand what his meaning of "subsidy" is.

Mr. Hilliard: I point out that wasn't the question, what his meaning— The question was, can subsidies be a form of price discrimination.

The Court: I think that was changed. We are dealing with his definition of the word "subsidy" at the moment.

The Witness: The term "subsidy," the English term

"subsidy" comes from the Latin "subsidiium," which means to aid or to help. It is a subsidy. It is an aid or a help. That is the generic meaning of the term. And subsidies can take various forms. It can take the form of a grant of money. Our Government subsidizes the American shipping lines by paying the American Mail Line, for example, the difference between the foreign wage rate and the American wage rate. It is a subsidy to help, it is an aid, it is a cash grant. That is one form of subsidy, you see.

The Government subsidizes various situations by making [2511] things available at a lower price. That is a form of subsidy. And then the Government also subsidizes certain situations by means of a tariff to keep out the goods so that the domestic producers can get a higher price, you see. It is an aid or a favor. It can work in the form of giving people more money, either directly or indirectly, by having lower costs, by lower costs. Now, to answer your question, if a supplier were to give one customer a lower price than another, that lower price would be an aid or a favor, and thus generically a subsidy.

Q. Is it necessary that the subsidy be in the form of a lower price? A. It doesn't have to be a lower price; as I have mentioned, in the case of our own Government, subsidies frequently take the form of price assistance or cash grant.

. . . . .  
[2513] Q. (By Mr. Hall) Under what marketing condition, in other [2514] words, in a retail market, would a business concern be in a position to practice price discrimination? What economic factors would be involved to permit a business concern to do such a thing?

Mr. Hilliard: That again, Your Honor, would be an abstract conclusion of the witness, not based on a fact situation.

The Court: It pinpoints it now. We have been told what

an open market is and that type of thing. He may answer it.

Mr. Hilliard: So my record is clear, this calls for a hypothetical question without asking the witness to assume any fact situation existing in this case.

The Court: He is giving us his information and knowledge. You may answer it.

The Witness: The question asked is one which is frequently discussed in economic literature, namely, under what conditions can price discrimination arise or exist.

It is a business practice which is not found in certain markets, as my studies have shown, in public writings. It does not exist, for example, in the wheat market or the corn market or the apple market or the egg market or the potato market, but it does exist in certain markets.

The testimony of leaders in the field of economics going back to Professor Taussig at Harvard, Professor Jacob [2515] Viner, Chicago, now at Princeton, Professor Fedder at Princeton, the Canadian Combines Commission in Canada, and my own writings, as well as those of others, have developed the generalization that price conditions, that price discrimination as a business practice can arise and exist only under conditions of some degree of monopoly power. In other words, the conclusion is that price discrimination and monopoly are Siamese twins. You do not find price discrimination without some degree of monopoly.

Q. Why, under these conditions, would a business concern practice price discrimination?

Mr. MacLaury: Same objection.

The Court: It will be sustained.

Q. (By Mr. Hall) What is price leadership?

Mr. MacLaury: We object, Your Honor. That question is not pertinent to the issues in this lawsuit.

The Court: I don't know. It may or may not. It depends upon how we ultimately view the legal transaction.

Mr. MacLaury: As far as this lawsuit is concerned, it calls for a legal conclusion.

**The Court:** It will be overruled.

**Q. (By Mr. Hall)** Will you define price leadership for us? **A.** In an open market, as I have mentioned, agricultural products, livestock, price is made by the forces of supply and demand. No one person makes the price, no one firm. It [2516] is made by the market. If the price is too low, buyers bid it up. If it is too high, sellers bring it down. The seller and demand make the price. That is the law of price and demand.

In certain markets where there are a few sellers and some few or one control a large part of the supply, that control over supply may give the large supplier the power to make or affect the going price, which is largely followed by other people in the industry, and that is called "price leadership."

Price leadership is the action or power of making the going price which is largely followed by others in the industry. The classic example, of course, is in the steel industry, where the U. S. Steel Corporation admittedly has long been the price leader which others follow.

**Q. (By Mr. Hall)** Dr. Mund, maybe I could get you to return to this blackboard now.

**Mr. Hall:** Mr. Bailiff, would you draw it up again.

**The Court:** You may.

**Q. (By Mr. Hall)** You have the supplier and the two customers indicated here. I would like to ask you what the economic effect would be on one of those customers of a price discrimination in favor of the other customer?

**Mr. MacLaury:** Your Honor, that again calls for the conclusion of this witness which is not based on facts that [2517] have been offered in evidence in this case.

**The Court:** May I have the question?

(Whereupon the reporter read the previous question.)

**The Court:** He may answer that as a general proposition.

**The Witness:** We may assume that this customer got the product for twenty cents and this customer gets the product, we will say, for 22 cents. (Indicating on diagram.)



Customer No. 2 pays 22 cents, this customer pays 20 cents. That indicates discrimination. There is a distinction in pricing in substantially the same conditions and the effect here is to give this customer higher costs in relation to customer No. 1. His costs are higher now in the retail market. So we can make a list of the effects. One, that he has higher costs. Since his costs are higher, he has got to—higher than this man, he has got to try to recover those costs out of his price, and so that means that his price, these men are competing, this may be retail stores selling bread, and this customer has got higher costs than this man, this merchant, and he has got to return the higher costs out of the price of bread and he finds that his prices then are higher than this man's prices because his costs are higher, and so he has—so his sales decline.

Now, when your sales decline, he finds he has less volume and he finds that his fixed costs are the same, rent, [2518] the taxes, the salaries, delivery costs, insurance remains the same, but his volume is down, so his unit cost goes up. His unit cost goes up; since his unit cost goes up, his profit declines. And that is his income.

And since his profits decline, he finds that he can't maintain his facility, and he can't pay his help, and so his general business deteriorates and particularly from a business point of view his capital value goes down. His capital loss.

I will illustrate that. Let's assume he has been getting \$200 a year income profit. This is a simple figure. And we can capitalize that at five per cent to see what the capital is worth of his business. Now, if his income is \$200 a year and if you capitalize it at five per cent, his capital is \$4,000. That is what his business is on the basis of \$200 a year income. Now, if the income falls down to, say \$50 because of the factors I mentioned, higher cost, loss of sales, loss of profits, what is his capital? You capitalize at five per cent his business is now—his capital has now fallen to \$1,000, so he has a loss of capital from \$4,000 to \$1,000. A loss of capital because of the loss of profit. The profit



going down from \$200 to \$50 a year. So to answer your question, when competing customers have higher—in the case of competing customers, one has higher costs because of price discrimination, this chain of [2519] events inevitably arises and develops and it was for this reason that Congress took steps to pass laws against discrimination because under these conditions small business can't survive. Small business cannot survive in a regime of discrimination; it goes out for the reasons I mentioned, and if we are going to preserve small business, we have to have laws to prevent this sort of thing; other small businesses would go out regardless of its deficiency.

[2520] Q. (By Mr. Hall) (Continuing) Dr. Mund, I might ask if you would put "Dr. Mund" on those two pages you have been drawing on there.

The Court: Members of the jury, you have heard Dr. Mund give his concern on his belief as to why Congress passed a law. It is not for the jury or not for us to question why or reason why Congress passed the law. Congress did enact the law. When the Court gets to the point of instructions as to what the law is, do not question it. With that, you may continue.

Mr. Hall: May I request that this be marked, Mr. Clerk.

Mr. MacLaury: Both sheets marked?

Mr. Hall: Both sheets marked.

The Clerk: They have been marked Plaintiff's 333A and 333B.

Mr. Hall: Your Honor, we are offering these in evidence for illustrative purposes.

The Court: They will be received as part of the record in connection with the witness' testimony.

Q. (By Mr. Hall) Dr. Mund—

Mr. McLaury: Well, your Honor, we have of course our objection that we have stated before.

The Court: I understand.

Mr. McLaury: The objection also goes to the testimony of this witness.

[2521] The Court: I understand your position.

Q. (By Mr. Hall) Now, Dr. Mund, assuming that the facts in the present case would show that a large seller of petroleum products sold at a higher price to one customer and at a lower price to another customer, each competing with one another under substantially the same conditions and selling the same products, what would be the economic effect of that business practice?

Mr. Hilliard: I object to the form of the hypothetical question, your Honor, because it does not assume facts in evidence in this case that have been established, your Honor.

The Court: Under the plaintiff's theory, he may adopt what he wishes, if it is ultimately sustained by the evidence in the case.

Members of the jury, the whole hypothesis then is destroyed and any meaning based thereon is meaningless. So, pay attention to the hypothesis that counsel suggests; and then, ultimately, if that hypothesis is true, then you may give it the weight of your opinion, or the opinion of the witness such weight as you as triers of the fact are entitled to give it. You are being advised that you may rely on the hypothesis.

Mr. McLaury: Your Honor, at the risk of objecting further, interrupting further, to make our record clear, our objection is based primarily on the ground that the [2522] facts stated in the hypothetical question do not fairly describe the evidence with respect to this market, which he has introduced into the record to date.

The Court: I would like to have the question again as to the opinion.

(Whereupon, the Court Reporter read the pending question.)

The Court: You may answer.

A. The economic effect, the economic effect—

Mr. Hilliard: Your Honor, do I understand the order of

this thing that he should be asked if he has an opinion and then be asked to state it.

The Court: Yes, he should. That wasn't the basis of the objection, and I wasn't going to take the time.

Do you have an opinion concerning that, doctor?

The Witness: Yes.

The Court: The next question should be placed.

Mr. McLaury: We would make an objection.

The Court: Well, let's lay that foundation hereafter.

Mr. Hall: Yes, your Honor.

The Court: You may give your opinion.

Mr. Hilliard: We have an objection.

The Court: You may answer.

A. My opinion and understanding and knowledge of this practice would indicate that the effects would be as I illustrated in the diagram just given to the Court.

[2523] Mr. Hall: For the record, that would be Plaintiff's 333A and B, your Honor.

A. (Continuing) And if this practice were to continue for any length of time based on the evidence which we have from other studies—

The Court: That goes beyond the question.

The Witness: All right. I am sorry.

Q. (By Mr. Hall) Dr. Mund, taking the period of 1955 to 1957 and assuming the existence of price leadership in the marketing of gasoline and other petroleum products and of a non-open market as you have defined that term for such products and a decline in independent jobbers in the petroleum industry and a constant upward trend in the tank wagon price, that is, the price charged to retailers, do you have an opinion as to the economic condition of that market?

Mr. Hilliard: Your Honor, we would object to that again. Again, the hypothetical question does not merely set forth the factual matters in this particular case. It assumes facts not in evidence. It assumes situations which are not at issue in the case and asks for an assumption of price leadership on which there is no evidence in this case.

The Court: We have to of course relate them, to relate the question to the area of communications we have before us. We have to assume price leadership within the definition we have just given to the jury. He may answer.

[2524] Mr. McLaury: Your Honor,—

The Court: Yes.

Mr. McLaury: Further, no definition of the market is described, and the evidence is recited with respect to the decline in independent jobbers which I believe is not reflected in the evidence.

The Court: No, if there is testimony in the record concerning that phase, it will have to be up to the jury to determine the extent, what the extent of that evidence is.

There is pinpointed in the objection the fact there is not in the hypothetical an area of your market.

Mr. Hall: I will rephrase the question, your Honor.

Q. (By Mr. Hall) Taking the period of 1955 through 1957 and assuming the existence of price leadership, as you have defined it in the marketing of gasoline and other petroleum products in the West Coast; and assuming a non-open market for such products as you define the term to us; and assuming a decline of independent jobbers in the industry, that is, the West Coast industry, and assuming a constant upward trend in the West Coast tank wagon price, that is, the price charged to retailers, do you have an opinion as to the economic condition of that market?

Mr. McLaury: Your Honor, he is still not defining the market unless he is talking about the West Coast market.

The Court: He certainly is.

[2525] Mr. McLaury: And again I would point out, your Honor, he is talking about a decline of independent jobbers in the West Coast industry, and I have an objection to that. We would of course have all the, repeat all our other objections to the question as originally stated.

The Court: I have the basic objection, and I understand your objections to this hypothetical, and I will abide by my ruling.

Q. (By Mr. Hall) Do you have an opinion? A. My opinion is under the conditions sketched by you, the trend



would be toward increased concentration and an increase in oligopoly and a continued decline of small business with the tendency for the consumer, or the owners to face prospective higher prices.

[2526] Cross-Examination

By Mr. Mac Laury:

[2538] Q. All right. Now, Dr. Mund, you were asked a question, a hypothetical question concerning the market here in the West; I would like to put this question to you with respect to the gasoline, automotive gasoline market here in Portland during the years 1955 and '56; now, will you assume that in this Portland market—

Mr. Hall: May I make an objection, counsel.

Mr. McLaury: You certainly may.

Mr. Hall: Your Honor, I believe this is quite a bit beyond the scope of the direct examination. This Portland market wasn't touched on at all by the witness.

Mr. Hilliard: We have to apply, Your Honor, the opinions of the witness to the facts of this case.

The Court: May I have the question.

(Whereupon, the Court Reporter read the pending question.)

The Court: Yes, the objection will be sustained.

Q. (By Mr. McLaury) Well, let me ask you this, Dr. Mund. When you testified, you recall the hypothetical question asked you with respect to the market to which price leadership was maintained as described and that conditions of a non-open market maintained, as you have described, and that there was a decline in independent jobbers in the West Coast industry and that there was a constant upward trend in the tank wagon price on the West Coast, and then you stated certain [2539] opinions; did you intend those opinions to apply to the Vancouver market or the Portland market or the area generally where—let me put it specifically to the Portland market, the Van-



couver market, or the market in the Willamette Valley, Jefferson, Albany, Roseburg, or up to the Northwest and Centralia; did you intend that opinion to apply to effects and conditions in those markets?

Mr. Hall: Now, your Honor, I would object to the form of this question as being a multiple question.

The Court: It is.

Mr. McLaury: Well, I think counsel is correct. We will take it one by one.

The Court: I think I should interrupt these proceedings and make the announcement that has been handed to me. The President was shot. This has been declared officially, so I shall recess until 1:30 this afternoon.

Members of the jury remember the admonitions. Keep your minds open. 1:30 this afternoon.

• • • • •

[2610] **Maxine Ross** thereupon resumed the witness stand as a witness in behalf of plaintiff, and, having been previously duly sworn, was further examined and testified as follows:

#### Direct Examination (Continuing)

By Mr. Tilbury:

• • • • •

[2646] Q. Now, what is the variance—I won't ask you for every figure there—what is the price charged by Standard to Clyde Perkins as shown by your computations? A. It is sixteen, a little over seventeen—or a little over sixteen cents a gallon. It is sixteen point four eight six five cents per gallon.

Q. At the beginning of the period— A. Yes.

Q. —that you have identified? A. April 2nd.

[2647] Q. What was it at the end of the period? A. At the end of the period, we were paying over seventeen cents, seventeen three seven four.

Q. All right. Now, those are both figures that do not include the State Tax but do include the Federal Tax? A. That's right. The State Tax six and a half cents, and

Federal two cents at that time. The two cents is included in the Standard billing.

Q. How about the price charged by—well, let's not say charged, let's say invoiced by Perkins Oil Company of Washington invoices, if this will help, to Mr. Les Carter?

A. On April 2nd, we were invoicing Les Carter on ethyl a little over twenty-four cents a gallon, and on regular a little over twenty-two cents a gallon.

Q. Now, are those including taxes? A. Yes, that is including taxes.

Q. All right. So, to get the actual, to relate to the other, you would have to take six and a half cents off of that, is that true? A. Yes. Yes. You would have to take six and a half off of this to get a definite comparison with your cost.

Q. If I deducted six and a half from twenty-four I would come up with seventeen and a half? A. Yes.

Q. All right. Now, what was the price at the end? [2648]

A. Well, at the end we were selling Carter for twenty-four and twenty-two.

Q. How do those compare with the earlier figures you have given? A. We were selling for twenty-four thirty and twenty-two thirty, three-tenths of a cents.

Q. All right. In other words, within less than half of a cent— A. Yes.

Q. —is that true?

Now, as far as the margins that you computed, would you tell us what your computations establish on that; maybe I shouldn't use the word "establish", but what does it show?

A. Well, in April, in April, 1955, we were making over a cent a gallon. It was a cent and a third, approximately.

Q. On which products? A. On both products.

Q. All right. How was it at the end? A. Ethyl and regular. By the end of the period of time in October, that had decreased about 90 percent. It was a little over one-tenth of a cent on Ethyl and two-tenths of a cent on regular; about 90 percent in—decrease in margin.

Q. In other words, from a penny, you went down to one-tenth of a penny, is that true? A. Yes.

[2649] Q. Is that true of both regular and ethyl? A. Yes, it is.

[2695] Q. (By Mr. Tilbury) Now, do you have Exhibit No. 335? A. Yes.

Q. Now, what did you—in general, what sort of information did you develop from that? A. I developed the layed-in net cost per gallon at Centralia by Perkins' purchases from Standard Oil, and Signal Oil and Gas, their Centralia price based upon the answers in the interrogatories, and on Ethyl it was one cent a gallon. Signal Oil and Gas' price was one cent a gallon better than Perkins' price using Centralia as a destination. It would be layed-in to Centralia. And on regular, it was a half a cent better.

[2696] Q. (By Mr. Tilbury) When you say "better price," better from whom? A. Their laid-in price from Centralia had they both been picking the gasoline up in Centralia or Willbridge and hauling it to Centralia, one had a better buying price than the other.

Q. All right. What did—now, Signal Oil & Gas, according to the calculations you have made, you show Mr. Harris here, too, is that true? A. Signal Oil & Gas sold through Harris Petroleum.

Q. All right. Now, as far as Mr. Harris' selling price to Les Carter, what did you determine on the basis of the calculations that you have made? A. Mr. Harris sold to Les Carter at almost a cent a gallon cheaper than what we sold to Les Carter and almost a half a cent a gallon on regular. Carter's buying price was better from Harris than it was from Perkins.

Q. All right now, in other words, Mr. Harris, who was—did you show Mr. Harris buying his products from Signal Oil & Gas Company? A. Yes, he purchased from—he was invoiced by Signal Oil [2697] & Gas, Harris was.

Q. Could you illustrate this for us, this calculation you made this particular date, April 27th, 1955? A. You want me to put most all of it on here? (Indicating to paper attached to easel.)

Q. If you could just illustrate the nature of the calculations that you have made. A. Well, first they had a common source, Standard. Perkins and Signal Oil. (Whereupon the witness wrote on the paper attached to the easel.) This was your common source of supply. (Indicating to Standard.)

Perkins was under contract to Carter or Carter was under contract to Perkins, and this was our customer down here. Signal Oil & Gas sold through Harris to Carter. (Indicating to paper attached to easel.)

[2853] (Whereupon, Mr. Hall took the witness stand and read the answers to the questions as propounded by Mr. Tilbury.)

"Q. Would you state your name please? A. William A. McAfee.

Q. And your address, Mr. McAfee? [2854] "A. 15 Longview Court, Hillsborough.

Q. California? A. Yes.

Q. How long have you lived there, sir? A. Four years.

Q. How long have you been with Standard Oil? A. Thirty-two years.

Q. Your occupation at present with them is what? A. Vice present and director of Western Operations.

Q. What is your authority in connection with that, the scope of your duties? A. Well, I have five departments of Western that are reporting to me and have the responsibility for supply and distribution for Western."

"Q. From your experience in this industry for many years, could you give me your judgment as to how much a jobber would require as a minimum in order to be able to operate his business?"

[2855] "A. Well, I can only tell you on the basis of what I know they lived with, which would range from four, four and a half cents to five and a half, six cents, in that area.

Q. Would you regard four or four and a half cents to be a minimum? A. Well, as I explained to you a little earlier, we have jobbers and had jobbers ranging from 200,000 gallons a year up to many million gallons a year, and certainly the 200,000 gallon a year operator could probably live very nicely within the three and a half or four cent spread.

Q. Do you know of any jobbing accounts where they are able to get by with two cents or under as a margin?

A. As a gross margin?"

Mr. Tilbury: A jobber. Oh, I'm sorry.

"Yes." Pardon me.

"A. A jobber?

Q. Yes. A. No, I don't know of any conditions like this.

Q. Can you give me the names of any jobbers in the 200,000 bracket? Are there any still? A. Now? Today?

Q. Yes. [2856] A. Well, probably not today. I was thinking about the period you were talking about here, '57 to '58,"—

Mr. MacLaury: Just a minute.

Mr. Hall: How is that.

"A. (Continuing) '57 to '58, and at that time the MacKenzie Kerosene in San Jose was in that category, a small jobber.

.....  
"Q. Is this about the only one? A. That's the only one I can recall.

Q. Would you give me some sort of idea as to how much you feel that a retailer should have in order to keep his station operating? A. Well, I am not a technician in this regard. I wouldn't be able to give you a very scientific answer.



Q. I am just asking for your best judgment as to what you would regard as an absolute minimum in order to keep the door open."

[2857] "A. All I know is that for many years they operated on what they talked about as a four-cent spread, and they seemed to exist on that basis. They don't do that today, certainly. It's upwards to five and a half to six cents today."

Q. Would you regard anything less than four cents to be a marginal type operation? A. Once again, on inexperienced advice, I would say I would have to think so.

[2860] **Allen Perkins**

was thereupon called as a witness in behalf of the plaintiff, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Hall:**

Q. Mr. Perkins, what is your relationship with Mr. Clyde A. Perkins, the plaintiff? A. Clyde Perkins is my father.

Q. Now, where do you live? A. I live in Anacortes, Washington, at the present time.

Q. And when did you first start in your father's business? A. I believe it was 1931 or '32, right after I got out of high school.

[3023] Q. (By Mr. Hall) Turning now, Mr. Perkins, to Plaintiff's 93-A-1—

[3024] Q. (By Mr. Hall) Will you identify this chart 93A-1 for the Court? A. Yes. This is a summary of gallons sold to various customers, regular customers of ours,

distributors and large service stations, and I have broken these sales down into our fiscal year figures which fits our books, and then I have worked it out to their average gallons per month that they purchased from us during these four periods of time.

Also I have, when we started selling them, the month we started selling them and the month that we ceased selling them, if the case developed.

Q. All right now, this is, you said, summary of gallons. Is there a combined figure for regular and ethyl gas? A. Yes, combined regular and ethyl and it covers only gasoline.

Q. What is your source for this information? A. I got this information from our recap cards and our customer cards, which is our accounts receivable basically and sales.

Q. Is that the 221D series that you have up there? A. Yes, yes, they are the postings from the actual invoices of the individual sales.

[3025] Q. And they are already in evidence? Are they marked received? A. Yes, these are. I don't—

Q. Just the 221D series. A. Yes, they are received.

[3035] The Court: It will be, and it is received as a summary of the accounts in connection with the testimony of this witness.

(Whereupon, Plaintiff's Exhibit 93A-1, being a chart, having been duly offered, was received in evidence.)

Q. (By Mr. Hall) Now, Mr. Perkins, are these records that that information came from, again, I just want to make certain I understand this, came from your customer ledger cards? A. Yes, sir.

[3036] Q. (By Mr. Hall) Now, let's take these accounts here. You have thirty something on there, and I prefer you take some of the big ones; let's take the Don Fraser Company first? A. Well, I have Don Fraser listed. They had them listed in the two places.

Q. Just a moment, please. A. Yes, that's right.

Q. That is true. I will have you explain that in a moment. Please bear in mind that the right four columns here are not now to be used, so you just turn that under?

A. Yes, I understand.

Q. All right. Now, with regard to the Don Fraser Company and the Don Fraser Oil Company, will you explain the relationship? A. Well, this is a summary of gallons for four periods of time. The first period of time is from April 1, '55 to September 30, '55; and then the next two periods are full fiscal years beginning October 1 to September 30th in each case, and then there's two months later that is October and November, well, October and November of the last two months of '57.

Q. Now, will you— [3037] A. This isn't going to mean anything to anybody without converting it to a monthly average because the periods of time are not related to each other, and it just means nothing.

Q. Well, let me do this then; let me take the two month—there's two periods of time here which are related to each other? A. We can give you two fiscal years.

Q. That's right. A. And yes, and complete the two outer periods.

Q. Take the Don Fraser—take the first fiscal year in the period and the amount of gallonage? A. It was 853,252 in the fiscal year '55 through '56; and 805,508 gallons for the fiscal year '56 through '57. Now, I have him duplicated with the same figures for the reason that I arbitrarily split him in half for the reason that Don Fraser testified that 50 percent of his business was owned by Clyde Perkins, and the other 50 percent was not owned by Clyde Perkins. I'm speaking of real property. So, if you want to get his figures correctly, you would have to add to it, add both, both of them together.

Q. All right. In other words, the same showing for the fiscal years— A. Yes.

Q. —would apply? [3038] A. That is the only one I did that with, and it is rather confusing here. I just split them in half, and it shows twice there.

Q. All right. Since we don't have this in a blown-up form, would you please start from the top and read these columns as to the two fiscal years? A. All right. The first one I will take is Champion Fleet Service, that is our company station at Vancouver.

Q. All right. A. The first period of time of the first year, '55 through '56 is the first year, 417,259. The second year 391,025.

Q. (By Mr. Hall) Go on to your next one then? A. The next one is Don's Champion Station, 146,654; the second year, 127,107—

[3039] Q. (By Mr. Hall) Go ahead. A. The next two do not represent a full year in either case.

Q. Well, you skipped Don Fraser, but that is because— A. Yes.

Q. —because you did it before. All right. A. Yes. Perkins Oil of Roseburg would be the next one.

Q. All right. A. That shows that has operated during the full two years.

The Witness: I will be glad to read all of them. I should put in Interstate Services in here, and they had 28,013 during the first year and none in the second year. Burt Pepper, the first year, was 17,648 and the second year [3040] 148,611. Mr. Pepper started with us in 1956, September, and that was one month before the first year started, so that is the reason I didn't feel that it was applicable to read. Perkins Oil Company of Roseburg during the first year, 498,758. The second year, 361,988. R & H Champion Fleet Services in Centralia, that is Erv Helgeson's place, 362,215; the second year, 181,540. Sam Cremedas in Camas, 15,037 the first year; 14,801 the second year. Malloy Fuel, this is also one that didn't complete a full period, 5,991 in the first year and 500 in the second year. Twin Cities Oil Company, 748,957 the first year; 580,249 the second year. Hussey Heating Oils; he was only in for a



period in the first period of 139,875. He didn't operate in the second period. I mentioned the Don Fraser. I have him repeated with the same numbers as before. Holleman Motor Company, 299,022; second period, 274,612. Barcus Sales and Service we do not have individual account records for the first year because he was delivered out of a local branch down there; but he, the second year he had 111,901. T & R Service, 35,801 the first year. 45,154 the second year. He did show some gain. Myrtle Point Oil Company, 170, 187,283 the first year; 204,722 the second year. Mid-Oil Company—

Q. (By Mr. Hall) Pardon me. He also showed some gain? A. Yes, he did. He showed some gain.

[3041] Q. If you get to any more where they showed gains, make a point of it and check it off. A. Fine.

Q. All right. A. Mid-Oil, 385,886 the first year; the second year, 60,690.

[3073] Q. Now, might I ask you whether there is a direct relationship between the volume of gasoline sold and the volume of heating oils and the T.B.A., etc.?

Mr. Hilliard: Well, your Honor, I would object to that conclusion of the witness.

The Court: You may include the heating oils. I would permit that question but not with reference to the T.B.A.

[3074] A. Yes, in our business, particularly, there was a direct relationship. The great majority of our heating oil business was sold through our gasoline distributors. In other words, they sold heating oil as well as gasoline. When they quit purchasing gasoline, why, they quit purchasing heating oils at the same time. In other words, they wouldn't quit us and buy gasoline from somebody else and continue to buy our heating oils. So the heating oils in our business was a companion sale so as to speak.

[3243] Q. Now one other question—there is some record here as to margin and I see the margin less Perkins' total margins.



Margin is sometimes used to mean the difference between one's cost or the price one pays for an article and the price that one charges for an article, is that what you meant by a margin in this instance? A. No, margin in the oil business is your discount below the posted tank wagon price.

[3285] Q. (By Mr. Hall) May I ask you if you know of your own knowledge what Standard Oil Company of California's market [3286] position was relative to the total Northwest retail market during the claim period? A. Yes.

Mr. MacLaury: I object.

Mr. Hall: He said yes. Then I will ask you what it was.

Mr. MacLaury: I would object, Your Honor, to this witness giving his opinion as to the market position of the Standard Oil Company in the Northwest, and I secondly object on the grounds it is immaterial.

The Court: May I have the full question so I might get it entirely.

(Whereupon the reporter read the previous question.)

[3287] The Court: Well, of course, we don't know what he is going to tell us is the date at which he forms that conclusion or bases that information upon, if he says "Yes". Now, he can tell us if he will what information he has.

Q. (By Mr. Hall) What would be the basis of your making the affirmative answer, which you just made?

A. All right. On one basis of what Standard has told me.

Q. All right. A. And in particular reference to Mr. Burns.

Q. All right. A. Another reference, that I have watched consistently by the month where the respective positions in the industry are such as Oregon, Washington, as to their taxable gallons, taxable gallons on these records or tables were issued by both the states of Oregon once a month, Oregon and Washington once a month.

Mr. MacLaury: Well, your Honor, as to the first basis,

of course, Mr. Burns had no authority to tell this witness or anybody else what Standard's position in the Northwest was. Mr. Burns wasn't acquainted with the market in the Northwest principally himself, and, secondly, these documents [3288] he has referred to, these tax reports are hearsay.

The Court: The material itself will be acceptable.

Mr. Hall: May I ask the witness to give his information, your Honor?

The Court: I think we ought to have that material rather than have a second chance at it.

Q. (By Mr. Hall) Specifically, are these reports which are here in Court, the two? A. Yes, I believe that they have been introduced. I think one of them is blacked out, but they were in Court.

Mr. Hall: I will get the exhibits on those, your Honor, here during the recess; but, may I ask him then with regard to Mr. Burns, what Mr. Burns' position was and so forth?

The Court: Yes, you may.

Q. (By Mr. Hall) All right. Mr. Burns' position with Standard was what? A. Mr. Burns was Regional Manager for the Oregon Division.

Q. And it was your statement that his statements to you were a basis for information you had as to Standard's comparative market position of the Pacific Northwest? A. Yes, sir.

Mr. Hall: Then I would like to ask what Mr. Burns told him, your Honor.

Mr. MacLaury: The same objection, your Honor. May I say, does your question in regard to Mr. Burns apply to the [3289] Oregon Division?

The Court: Maybe that is all he is going to ask him about.

Mr. MacLaury: His question would be what about the situation in the Northwest?

The Court: The witness has to take the question as he finds it. It is only the question that gives information.

Mr. MacLaury: And a further objection on the grounds previously stated.

The Court: Overruled. He may tell us.

The Witness: Mr. Burns told me, Lee and Jerry and I—Lee Powell, Jerry Harris, and I that Standard Oil did nearly 30 percent of the total volume in the Northwest.

Q. (By Mr. Hall) Now, this related to what, the claims period? A. Yes.

Q. Give us the time; when did he tell you this? A. This was—we had a meeting with him in '56. I don't remember. I think it was before the '56 contract was signed, and we requested a meeting to go to San Francisco; and he arranged for the meeting, and we had to write a letter, first, in order to acquaint the San Francisco people with what we wanted to talk about.

Q. Is that—go ahead. A. One of the things we wanted to discuss was the declining [3290] gallonage, and so this was a very pertinent question. We asked Mr. Burns what their position was and what our percentage of Standard was.

Q. All right. May I ask— A. This question had been asked several times of Standard.

Q. Now, I will ask you what the question, what the answer to that question was, your percentage of Standard in the Pacific Northwest?

Mr. Mac Laury: I have the same objection.

The Court: It will be overruled. He was told about the situation. The jury can give it such weight as they desire.

A. Mr. Burns answered the question in this way, Mr. Hall: That Champion represented about 17 percent of the gallons that were sold by Standard in the Oregon Division, which are Western and Central Oregon and up into Washington as far as Toledo, which I believe is their breaking line. He didn't give me the figures on the area north of the Seattle district.

Q. Now, Champion— A. This is Champion's percentage.

Q. Champion is the group you just mentioned? A. Perkins, Powell and Harris, the two Harris companies.

Q. What is the Perkins percent of the Champion group?  
 A. We had a little over 50 percent of it.

[3308] (Whereupon Plaintiff's Exhibit No. 93-B, [3309] Chart, was received in evidence.)

Q. (By Mr. Hall) Mr. Perkins, would you explain to the jury 93-B?

(Witness marks easel.)

The Witness: This represents a chart which shows our sales of gasoline. This includes regular and Ethyl. They are added together for the years 1955 and '56 and '57. And they are calendar year sales of both the Oregon and Washington sales. In the year of 1955, we sold 7,471,386 gallons during that calendar year. The next calendar year we sold 7,122,224 gallons. The third calendar year, 1957, of which I hope you can read my corrections, we sold 6,493,773 gallons.

[3310] The Witness: Now, we did sell—after the 4th, we sold a number of uncontrolled accounts of gasoline that we purchased from Westway. However, most of the service stations that Westway took over, they supplied them, and the gallonage does not show up here for the last twenty, twenty-five days of December. This is—

Q. (By Mr. Hall) Pardon me. Now, this is related to a whole year's figure there? A. This is in relation to a whole year.

Q. Right. A. He is referring to the last twenty-five, twenty-six days of December.

Q. Now, would you relate that to the other— A. This represents the maximum number of gallons that Perkins was—was allocated out of the Standard contract between Perkins, Powell and Harris. This is the total number of gallons that could have been obtained from the [3311]

Standard contract if Standard delivered the maximum quantities in the contract and the Champion group were able to divide the maximum quantities. In 1956 the contract was redrawn, and because the volume of the Champion group was so far below the 10% increase that would go on the contract maximum, Standard reduced the maximum on the new '56 contract to 12,384,000, and then it was subject to a 10% increase up to this figure if we would have sold this much in '56. That's why this line—this has no bearing on the case except that I put this on here just in case somebody would wonder whether or not Standard would have been required to deliver us gallons if our chart had gone this way. So it's of no other interest than that.

[3334] Mr. Hall: Can we take 93-C for the Court? 93-C for the Court.

The Witness: It's the next one.

Q. (By Mr. Hall) Mr. Perkins, would you identify for the Court what you have there and what the source for the information is? A. Yes. This is an identical chart to the one on gasoline except this represents our fuel oil sales for the year of '55, '56, and '57. I have not put on this chart anything relative to the Standard contract maximums which was available. There was sufficient quantities under the Standard contract to meet considerably more sales than these. This merely shows our sales—a graph of our sales for these three years involved. Those sales are from the same source of material that the gasoline sales are from. I forget the—

Q. 93-B-1? A. 93-B-1. I forgot the exhibit number.

Mr. Hall: Your Honor, we are offering 93-C in connection with this witness' testimony.

[3335] (Whereupon Plaintiff's Exhibit 93-C, chart, was received in evidence.)

Q. (By Mr. Hall) Mr. Perkins, would you turn this thing around for the jury to look at now. A. Yes, sir. (Witness



turns chart around) This is a graph and a chart of our sales of fuel oils. That's stove oil, diesel fuel, and furnace oil for the years '55, '56 and '57. In the year of 1955, we sold 4,463,203 gallons according to our sales records. For the year '56, we sold 3,600,485 gallons. In the year of '57, our sales were reduced to 2,468,172 gallons.

[3359] The Witness: Mr. Hall, I might better explain this if I would refer to 93-0 where I got that figure.

Mr. Hall: All right.

The Witness: And then so long as there might be a confusion of the wordage. This is a graph of the amount of rents that were the difference between the rent that we paid out to lessors and the amount collected from lessees, the service station operators and so forth. For the year 1955, the two corporations paid out \$37,247.00 and they collected back from those same properties \$30,498.00; and this made a total difference between what we collected and what they paid out of \$6,749.00 for this year. The year '56 the rents paid out were \$51,842.00, and the rents collected were \$35,627.00 or the difference between those of the rents collected and the rents paid out for \$16,215.00. In other words, there was this much more paid out than was collected. In the year of 1957 I don't have to repeat all these other figures for you. There was—well, I can. The rent paid out, \$51,381.00, and the rents collected were \$32,115.00 or a difference of uncollected rent of \$19,266.00 for the year [3360] of 1957.

Q. (By Mr. Hall) When you say "uncollected rent," in whose favor is this uncollected rent; whom are we talking about? A. These are the two corporations. They paid out \$19,266.00 more rent than what they got back.

Q. I am referring to—I realize what their rent, what they paid to and so forth; how did you make your rent allowances and to whom? A. Well, it was to service station operators, various, various ones.

[3364] Q. (By Mr. Hall) Mr. Perkins, what was the physical condition of your service stations in nineteen—I am going to go through the three years, 1955, '56, and '57; you go by [3365] area; let's take Perkins Oil of Oregon or Perkins Oil of Washington and unless the statement would be the same as to Idaho; what was the physical condition of your stations in 1955 in Washington? A. Well, we did—Mr. Hall, we didn't divide. I couldn't say between Washington and Oregon.

Q. All right. A. We attempted during the years of '55 and '56 to keep our stations in a presentable condition. We painted our stations every two to three years and oftener if it was necessary. We tried to keep them well maintained, tried to keep the canopy lights in good condition, those neon signs operating, and repairs to drive-ways, roofs, and everything else that is necessary to have a presentable business. Our expenses that we have listed on 93-0 represents an accumulation of our total operating expenses. However, in this figure of expenses represents our service station maintenance and painting and so forth. In the year of '56 our total expenses was \$222,834.00. In the year of '57, we reduced our overhead to \$175,851.00. This is a reduction of some \$45,000.00 which was largely due to reducing our paying program, our maintenance, and of course there was a matter of personnel that we had to reduce at that time, too. We also eliminated our credit cards that we handled. We had our own credit cards. We eliminated those during this next [3366] year.

[4110]

Stanley D. Kummer

was thereupon produced as a witness in behalf of the defendant, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. MacLaury:

Q. Mr. Kummer, where do you reside? A. I reside at 4618 S. W. Othello, Seattle, Washington.

[4111] Q. By whom are you employed? A. I am employed by Western Operations, Standard Oil Company of California.

Q. And at the present time where is your place of business? A. I am assigned in Seattle, Washington, but I work out of that office in our territory.

Q. How long have you worked for the Standard Oil Company of California? A. I started out in 1938 as a service station salesman in the 39th and Sandy here in Portland, so that would be, oh, twenty-five plus years. Twenty-five and a half.

[4376] Cross Examination

By Mr. Tilbury:

[4431] Q. (By Mr. Tilbury) Now, Mr. Kummer, is it not also a fact that during one year alone the Standard Oil Company paid the Signal Oil and Gas Company a subsidy payment of \$618,363.27 in one year alone?

[4432] Mr. MacLaury: Your Honor, I have an objection to the question unless counsel can define what he means by the word "subsidy".

The Court: Well now, I don't know. He is placing a leading question to this witness that that figure is not included in his schedule. If that is what he is implying, it would be proper. It would be proper. If he is merely taking an addition of what this schedule shows and asking this witness to confirm it, he is flying in the face of the rule of the Court, and I will have to deal with it at a later time.

Mr. MacLaury: State your purpose, please, counsel.

Mr. Tilbury: Yes, sir. My purpose is simply to show Signal Oil and Gas Company received a subsidy in excess of \$600,000.00 in 1957 alone.

Mr. MacLaury: Which is not reflected in this schedule.

Mr. Tilbury: Yes, sir, that is right. It is not reflected at least as far as this witness has indicated, no subsidies shown, as I understand it.

The Court: If that is the question, you may inquire of the witness.

Mr. MacLaury: We have a problem dealing with the word "subsidy".

The Court: If the witness doesn't follow, he can ask for clarification.

[4433] Q. (By Mr. Tilbury) Is the question clear, Mr. Kummer? A. No, we have discussed your subsidy before, your phraseology; and I understood it to be equivalent to retail price assistance as shown in Exhibit 1448. Are you now referring to some other matter?

Q. I am just merely asking. Let's call it retail price assistance; do you show anything like the amount that I have given you that is in excess of \$600,000.00, whether we call it a subsidy or we call it a retail price assistance or whatever name you wish? A. Retail price assistance in my opinion refers to perhaps service stations, as you have indicated Grace Oil. This subject to which you are referring, if I understand the connotation, refers to additional allowances or discounts which have not been stated to be retail price subsidies by me.

Q. I am not asking you about subsidies now; I think I am using the term—

Mr. Tilbury: May we have box 85D, please, which I think is on the top there on the left-hand side, Mr. Buchanan. I think it is the top box on the left-hand side at the back.

(Whereupon, the box of documents was delivered to counsel.)

Mr. Tilbury: Yes, may I see that for just a moment.

[4434] (Pause).

Yes, would you hand this to him, Mr. Buchanan?

Mr. MacLaury: May I see that, please?

(Whereupon, the document was handed to Mr. Mac Laury.)

Q. (By Mr. Tilbury) I will ask—

Mr. MacLaury: Your Honor, now, if counsel is going to use the word "subsidy", I think in the light of the exhibit



that I have just seen, he should define precisely what happens because it is being used—in that folder, it is being used as retail price assistance in two different ways.

Mr. Tilbury: Well “subsidy” is the term used by the Signal Oil and Gas Company. I can’t very well interpolate what they meant by the term “subsidy”.

Mr. MacLaury: May I ask your Honor to look?

The Court: Let’s see what this question is and I will know what to look for.

Mr. Tilbury: If I might approach the witness, I think I can—

The Court: You may.

Mr. Tilbury: —show him what I mean.

Q. (By Mr. Tilbury) Referring you, Mr. Kummer, to what has been marked in this case as 85, one of the journal vouchers, as it is called, from Signal Oil and Gas Company, marked as 85D, dated December, 1957; and calling your attention particularly to the journal voucher, No. J-1235, [4435] dated December, ’57, I will ask you if it does not appear that there is a notation on that page to adjust liability, Standard Oil Company, for 1957 purchases of motor gasoline resulting from an under accrual of subsidies computed at sixty-five cents per gallon purchased, subsidy credit allowed; \$618,363.21; subsidy credit approved, \$570,896.82 with a line underneath it, \$47,466.39?

[4436] Mr. MacLaury: Now, Your Honor—

Q. (Continuing) Now, does—

Mr. MacLaury: The question proposed—

Mr. Tilbury: I haven’t proposed it yet.

Mr. MacLaury: All right.

Q. (By Mr. Tilbury) I am merely asking whether this entry refreshes your recollection of the incident in question and whether there was, in fact, some sort of subsidy which you may have forgotten about and did not appear for some reason or other in your schedule? A. This schedule, and Exhibit 1550 with the blow-up as 1551, the original document 1550 I will again read: “In January, 1957, a payment



was agreed upon and made by Standard to Signal Oil and Gas Company upon the basis of sixty-five hundredths cents per gallon of gasoline delivered by Standard to Signal Oil and Gas Company during the period 8-27-56 through 12-31-56."

Q. All right, Mr. Kummer. Now, that date— A. Now, this—

Q. Pardon me. A. Now, it is purely—in this particular document of Signal Oil and Gas, for whom I have never worked, I do not know their terminology, and again the same figure of sixty-five hundredths cents per gallon appears.

Q. Mr. Kummer, the date you just read us, I believe, was [4437] January—

Mr. MacLaury: Just a moment, counsel. Have you finished your explanation, Mr. Kummer?

The Witness: The amounts appear to be exact, in agreement. Maybe it is a coincidence.

Q. (By Mr. Tilbury) Well, isn't there— A. Now, if Signal Oil and Gas refers to the item that I have placed upon the footnote as a subsidy, then this footnote is correct and is, well, the basis of this document. If they are using the term subsidy in some other connection, and there is no—it is just a coincidence that these agreed—

Q. Mr. Kummer, isn't there an eleven month separation between those two items? Isn't the one that you read us from your schedule dated January, 1957, and the one from the Signal Oil and Gas Company dated December of 1957? Would you read those again and be certain? A. On dates, yes. But this appears to be some type of journal correction entry and it doesn't stipulate exactly what period. If these are identical, if they are talking about the same item, then they indicate that this was in 1957, which corresponds to the note. I am not familiar with Signal Oil and Gas Company's journal vouchers—

Q. Well— A. —nor am I familiar with their accounting procedures.

[4438] Q. What is the date—

Mr. MacLaury: Your Honor—just a moment, please, Mr. Tilbury. Your Honor, may I ask the Court to examine this document, and then I would like to make a statement with respect—

The Court: Well, he was asked to take that into consideration on whether or not it refreshed his memory, and he has told us that it doesn't.

Mr. MacLaury: It was read aloud.

The Court: I understand it was read aloud by counsel and the jury understands that this is not a matter of evidence. It is not in evidence. Counsel's statement is not in evidence, and it reverts back to the same proposition that we talked about the other day. When we make reference of some outside thing in existence, that may or may not remind us of something that we had forgotten about. That is all that that was used for. Disregard the language of the exhibit referred to as being the papers of Signal Oil.

Mr. Tilbury: May we have that chart, please. Just a little closer.

(Bailiff brings chart over.)

Mr. MacLaury: May I—

Mr. Tilbury: Well, counsel, I think—

Mr. MacLaury: I would just like to see the document before the witness gets to it, if I may. May I have that,  
[4439] Mr. Bailiff.

(Bailiff hands document to counsel for defendant.)

Mr. Tilbury: Well, let's see. I don't want to block anyone.

(Counsel Tilbury moved blackboard over.)

Mr. Tilbury: Have you completed your examination, Mr. MacLaury?

Mr. MacLaury: Yes, of this document here.

Mr. Tilbury: If that could be handed to him again.

(Bailiff hands document to witness.)

Q. (By Mr. Tilbury) Now, Mr. Kummer, I would ask you, please, what is—on your exhibit, you have down on the lower left hand corner, I believe, the date of January, 1957; is that not the case? Can you see it from there?

A. That's a blow-up of a copy I have here (indicating). In January, 1957.

Q: All right. A. That is the first line.

Q. Yes. Now, on the document that you read or that I indicated a minute ago—

Mr. MacLaury: That you read.

Q. (By Mr. Tilbury) That I read, right. The document that I read from, what is the date on that cover? A. The heading is, "Journal Voucher, Signal Oil and Gas [4440] Company, date, December, 1957."

Q. All right. Now, would you look at the other journal vouchers from the Signal Oil and Gas Company and tell me, please, if there are entries for each of the months during 1957 that appear there that are somewhat similar to that?

Mr. MacLaury: Your Honor, I would object to further questioning on these documents that are not in evidence.

The Court: Yes, the witness has been handed something that he has not testified about.

Mr. Tilbury: I have offered these, Your Honor.

The Court: There is no line of inquiry from him concerning these. He hasn't vouched for it nor said he knows anything about it.

Mr. Tilbury: Your Honor, I have offered these documents, and I will certainly again offer them. I feel they are important. Any time—

The Court: Not through this witness.

Mr. Tilbury: Pardon me?

The Court: I say not through this witness. He knows nothing—

Mr. Tilbury: Well, not unless he knows some information, I think that is true. But I want to state that I had made an offer of them.

Mr. MacLaury: Well, Your Honor—

The Court: My records don't show that. My records [4441] show that 85-A, B, C, and D were received as being supporting data.

Mr. Tilbury: Mr. Shepard's—

Mr. MacLaury: And not, Your Honor, in the Portland area.

Mr. Tilbury: No, I am prepared to make a breakdown on that. Your Honor, I think they were identified in connection with Mr. Shepard's deposition which has been read in evidence. My impression was that all of Mr. Shepard's deposition was read, together with the information that he sent to us in the form of these boxes.

The Court: Well, I will have to review my record, but my indication is that they were identified and either that they are to be tailored as to area or as to date, something of that nature. I will have to check the record.

Mr. Hilliard: Yes, Your Honor. There was much testimony that was beyond the entire—beyond this area that covered the West Coast's entire operation. And in the reading of the deposition, those areas were excluded by counsel.

Q. (By Mr. Tilbury) All right. I will ask this question: Mr. Kummer, is it not a fact that during the years of our claim, that over 10% of the overall Signal Oil and Gas gallonage which they purchased from the Standard Oil Company was purchased in the Pacific Northwest; that is, Oregon and [4442] Washington? A. I have no knowledge of any such figures.

Q. All right. Now, would you know, from having looked at the various documents which you have identified, that, in fact, in 1957, during the latter part of '57, the adjustment was not sixty-five hundredths of a cent but in fact was three quarters of a cent? If we might have 23-C, I think it might be helpful. For example, from July 1, '57 to December 31, '57, I believe the adjustment to have been in the neighborhood of three quarters of a cent and not the sixty-five hundredths of a cent. (Bailiff hands exhibit to witness) On page 28-A, I believe it is, of 23-C, I be-



lieve you will find the dates of the adjustments as indicated by Standard's answers. A. This is on 23-C?

Q. Yes, sir, paragraph D. A. It does state some figures in there. However, I do not recall using these figures on this particular format in connection with this—

Q. All right. A. —schedule 1550.

Q. Mr. Kummer, now, this document has been received in evidence. Would you read for us, please, the amounts in cents per gallon of adjustments extended to the Signal Oil and Gas Company by the Standard Oil Company during 1957 as [4443] they appear on Standard's answers to interrogatory 23-C. A. For the period 1-1-57 to March 31st, '57, sixty-eight hundredths of a cent. For the period of 4-1-57—

Q. Pardon me, Mr. Kummer. I think we have got the account in the wrong place. I believe it is—I know it is a little confusing, but I believe it is sixty-six hundredths of a cent for the first three months. A. Oh.

Q. Do you see what I mean? A. Yes. For the period of 1-1-57 to 3-31-57, sixty-six hundredths. For the period 4-1-57 to 6-30-57, sixty-eight hundredths, for the period of 7-1-57 to 12-31-57, seventy-five hundredths.

Mr. MacLaury: Your Honor, to assist the witness in this testimony, may I hand him Exhibits 1550-C-1 and C-2 which counsel suggested be put in evidence this morning and which is a further breakdown of the schedule 1550.

Mr. Tilbury: I have no objection.

The Court: You may hand it to him.

(Bailiff hands exhibit to witness.)

Q. (By Mr. Tilbury) Mr. Kummer, on the—well, I will give you the chance to look at these, if you wish, or perhaps you don't need the additional time. Is it not a fact that on the figures that you have been reading for us there is no time during 1957 as indicated where the adjustment was in the amount of sixty-five hundredths of a cent? In other words, it was sixty-six hundredths to three quarters of a cent? A. For the period on these exhibits, 1550-C-1 and 1550-C-2, for the period of 7-1-57 through 12-2-57, the adjustment is shown as seventy-five hundredths.



Q. Now, if there were an adjustment of sixty-five hundredths of a cent during 1957, this then would have to be something other than those that have been indicated; is that true? I mean if an adjustment had been made by Standard, I am asking you to assume such a fact, in the amount of sixty-five hundredths of a cent, would that not have to be something which is supplemental at least to those that you have read for us which vary from sixty-six hundredths to three quarters of a cent? A. I would not say supplemental. It is indicated on the combined schedule and on these schedules the statement that the sixty-five hundredths was rendered in January, 1957. It's on the footnote on that chart or schedule. It's on these individual ones, the sixty-five hundredths of a cent to which you refer (indicating).

Q. I realize that, but the date that I thought you had indicated was January of 1957 and not December of 1957? A. What date is that—

Q. The date— [4445] A. —to which you have reference?

Q. The date that I have reference to was the date that appears on 85-D where the entry subsidy credit in the amount of over \$600,000 appears in the amount of sixty-five hundredths of a cent. Is that not something, sir, which is dated in December whereas the entry that you have on Exhibit 1551 is stated to be January? A. I do not have any exhibit in front of me with \$600,000 on it.

Q. Well, I don't know where it is at the moment. It is 85-D, wherever that is.

Mr. MacLaury: Well, that is not in evidence, Your Honor. Counsel is again reading from a document that is not in evidence.

Mr. Tilbury: Well, I thought it was, but I will certainly offer it in evidence. There is no mystery about it.

Mr. MacLaury: Well, we would object to it because—

The Court: Well, he is entitled to have the Court deal with it at least. What do you want; 85-D?

Mr. Tilbury: Yes, sir, that's right. That was the box of the Signal Oil and Gas Company. I will separate out

the part. It doesn't matter, but I would certainly think it—the one we had reference to was the one in December, 1957. It is marked 1235 in this box from the [4446] Signal Oil and Gas Company, a folder. There are some additional folders for the other month, I think with the exception of one month which doesn't appear to be here, but all other months are here. Perhaps rather than offer it in mass, I could offer those individually. If they could be marked in some way.

The Court: Well, this witness is not the appropriate witness or vehicle to use for a re-offer of these exhibits.

Mr. Tilbury: All right, sir.

Q. (By Mr. Tilbury) Well, in any event, just to—without going over the same ground, there is no entry here showing that an adjustment or subsidy credit had been given to Signal Oil and Gas Company in December of around sixty-five hundredths of a cent? That would not appear on your schedule; is that true?

[4447] Mr. MacLaury: That is an improper question. There is no evidence here—it is a hypothetical question not based on any evidence in this case.

The Court: It is his theory, at least, and it goes to find out, so far as the plaintiff's theory is concerned what the data is. The witness can tell us whether or not it is a fact that he used.

Mr. MacLaury: Your Honor—

The Court: Whether or not the factor was or was not used makes any difference has to determine on something else—

Mr. MacLaury: Yes, I appreciate Your Honor's thought but my position is that there is the implication by counsel's statement of the fact that the fact did exist and there is no evidence of that and it is a hypothetical question based not on any evidence produced in this case. It assumes something which—

The Court: I didn't take the question to be such. May I have it?

The Reporter: Your Honor, the other reporter had it.

The Court: Very well. Whether or not counsel asked the witness to assume to be the fact makes no difference, as I understand it. All counsel needs to ask him is whether or not this schedule took into consideration any factor of certain amounts of discount or whatever it was. The witness [4448] can say "yes, it did," or "no, it didn't."

Q. (By Mr. Tilbury) Did your schedule reflect—

The Court: Members of the jury, each counsel wants the other counsel to speak in his words and unfortunately the game doesn't go that way, and by the same token counsel is very astute, as both counsel are, can very often give an impression by their questioning, which would not elicit from a witness, and while it isn't quite as crude as the famous old statement "Are you still beating your wife," it is something like that, it is an astute question to say the least. Bear in mind, gather no inferences whatsoever to the form of question that counsel may ask. This counsel is entitled to know whether or not this rather complicated, and I think we will all agree, schedule and its foundation takes into consideration a given factor or not, and the answer is "Yes, it does," or "No, it doesn't." Whether or not that makes any difference must depend on some other evidence in the case and not what counsel says.

I will sustain the objection to the question as it is now worded and let counsel reframe his question without making any assumption.

Mr. Tilbury: Well, I think perhaps the point has been made so I won't rephrase it.

Mr. MacLaury: That is precisely my point. The point is made, Your Honor.

[4449] Mr. MacLaury: Your Honor, I would like an opportunity to take up with the Court this line of questioning on the Signal Oil and Gas figures, at the Court's pleasure, tomorrow morning or any other time.

[4496]

Donald Carter

was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. MacLaury:

Q. Mr. Carter, where do you reside? A. At 7126 North Williams here in Portland, Oregon.

Q. Now where do you work? A. I work in the regional office of Standard Oil Company here in Portland, Oregon.

Q. How long have you been employed by Standard, Mr. Carter? A. About seventeen years.

[4497] Q. Now, you testified that you were in the Pricing Section? A. Pricing Section, right, from 1955 or prior to that time, actually, up to 1957, the claim period.

[4500] Q. Now, are you familiar with the procedures the Standard Oil Company uses in its marketing organizations for making price surveys? A. Yes, I am.

Q. Would you describe that generally for the jury. A. We have through the claim period, we maintained a large sheet of paper wherein we listed all of the localities throughout our marketing area and listed our own stations at the top usually, or if it was a Chevron station down amongst the competitive service station, we listed all of the addresses involved and then as a price condition arose [4501] or the price started to fall off or signs indicated some disturbance in a given area, our retail representatives, whose normal duties would either be—see it themselves or when the station would call it to their attention, he would then make a survey. He had an identical list, a sheet just like we did. We made them in duplicate. He took a complete survey of all of the stations involved and then transmitted that information immediately to our office

where I or one of the other fellows would record this information down exactly as given. We would then take it to our management for their review and the recommendation would be sent to San Francisco by wire, or usually by phone, and then we awaited their decision in the matter.

Now, our retail rep, our personnel who take these surveys—prior to entering that job, they are people who probably spent four or five years working in a service station; they are people, therefore, who have experience with price conditions, as such, in the service stations, the various jobs that they held after that qualified them to go on for this position. After being made a retail representative, they then spent anywhere from two weeks to a month, depending on the job they held, riding with another retail supervisor to get acquainted with all of the various duties involved. After that period of time, they went to our San Francisco office where they attended a seminar for further instructions.

[4502] Q. (By Mr. MacLaury) (Continuing) By a "retail rep". You mean by that a retail representative? A. A retail representative.

Q. A retail representative. Now, you have described how the price survey was taken; would you explain to the jury—you mentioned a large sheet of paper. Would you explain to the jury what kind of information is put on that large sheet of paper and how it is organized? A. Well, as I stated, the localities are listed on top, and we have identification, a letter we are using, and then all the stations are listed down in that given locality. This locality is set up by the retail representative. What he does is go out into a certain area where we have a station and take the stations that would really affect our station and have an impact upon our gallonage were they to drop their price, and that is what we then set up as a locality, and we draw a map in accordance with those boundaries; and he surveys those individual units. That is the information we record.



Q. How is this information recorded on the large sheet, and what is put down there? A. We put down—(Interrupted)

Q. I suppose the station address and date? A. Right. The date that as of the date he takes the survey. We list that on the top. Then we put down the regular [4503] gasoline by date right across, and he takes a complete survey. No changes are made. We just make a dash or if there is no survey, we might just make a line right on down showing on that date nothing had changed. All the information we had prior to that date remained the same.

Q. And do those surveys actually show the prices on the pumps? A. That's right. That is what they are.

[4557] Q. (By Mr. MacLaury) Now, before we go to those exhibits, just a few questions, Mr. Carter. Were any price surveys ever made by Standard in the City of Vancouver during the period 1955 through 1957? A. No.

Q. Are price surveys such as we have shown—such as you have testified to here in connection with 1682 ever been made when there is no price war or depressed price situation? A. None. They keep an accurate check of prices, but if there is no depression, then there is no survey made.

Q. Now, was there any retail price assistance extended to Chevron dealers in the Vancouver area during '55, '56 and '57? A. None whatsoever.

[4558] Q. Is price assistance always extended—was price assistance always extended during the period of the middle of '53 through '57 in Vancouver and in Portland during times of price wars? A. Yes.

Q. Was it ever extended when there wasn't any price wars? A. Never.

Q. Why didn't you take any price surveys, or why didn't Standard Oil Company take any retail price surveys in Vancouver during the period '55, '56, and '57? A. Because the prices were never depressed in Vancouver during that period.

[4737]

Ross R. Grover

was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. MacLaury:

Q. Mr. Grover, where do you reside? A. I live in Sacramento, California.

Q. 2781 13th Street? A. That is correct.

Q. What is your business? A. I am a C.P.A. Certified public accountant.

Q. Do you have an office in Sacramento? A. I do.

Q. Are you associated with some firm? A. Yes, it is a partnership. There are five partners. The business is known as Atkinson, Grover & Company.

Q. How long have you practiced as a C.P.A.? A. Approximately twenty-one years.

Q. So you became a certified public accountant sometime in 1942 or 1943? [4738] A. That is correct.

Q. Are you the auditor for Western Hyway Oil Company? A. Yes. We have been auditors for Western Hyway Oil Company since 1954.

Q. And are you also the auditor for the corporation known as the Regal Stations Co.? A. That is correct.

Q. Now where is the head office of Western Hyway Oil Company? A. Western Hyway Oil Company's principal office is in West Sacramento, California.

Q. Can you describe generally the business of Western Hyway Oil Company? A. Western Hyway Oil Company operates a fleet of tank trucks and also has marine terminal on the Sacramento River in which they receive barge loads of petroleum products and distribute those to other jobbers and retailers throughout Central California, Western Nevada, and Southern Oregon.

. . . . .

[4739] Q. With respect to the years 1955, '56, and '57, what entities or what persons owned the stock, the capital stock

in Western Hyway Oil Company? A. In Western Hyway Oil Company sixty per cent of the shares were owned by Signal Oil and Gas Company and forty per cent was owned by three individuals who were corporate officers.

Q. All right. Now, Regal Stations Co., where was that [4740] incorporated? A. It is an Oregon corporation and it was incorporated in 1956. It began operations in 1956. It is an Oregon corporation.

Q. Now, what was the business of Regal Stations Co.? A. Regal Stations Co. is the operator of what grew up to be a small chain of retail gasoline stations.

Q. And is that the company that operated the three Regal stations in Portland? A. That is correct.

Q. From September or October, '56, on through '57? A. That is right.

Q. Now who owned the stock in Regal Stations Co. from the time it was incorporated in Oregon until the end of 1957? A. At the outset, at the date of incorporation fifty-five per cent of the shares of Regal Stations Co. were owned by Western Hyway Oil Company, and forty-five per cent were owned by four or five individuals who had no other corporate relationship to either Western Hyway Oil Company.

In October, 1957, these individuals who held shares sold their shares to Western Hyway Oil Company, so that at that date Western Hyway Oil Company controlled one hundred per cent of Regal Stations Co. and they continued to hold it throughout the remainder of 1957.

[4743] Q. Now, you have referred to liftings from Willbridge. Will you amplify that as to what entity lifted this gasoline and what entity supplied it? [4744] A. Liftings from Willbridge where delivery was taken by Western Hyway Oil Company on a purchase from Signal Oil and Gas Company and taken during this period from the Standard plant at Willbridge, Oregon. The deliveries during this period were made to three stations of Regal Stations Com-

pany located in Portland, and there was one station of another entity known as Fortune, Inc. at Salem during a portion of this period. I believe it began April, 1957.

Q. All right. Now, do the prices indicated on 1512 apply to the date of the liftings, the date of the invoice, or as of what date; I notice there are some dates here? A. These dates are the dates of actual lifting as contrasted to any invoice date. Normally, the invoice date covering one or more liftings would follow the date of the lifting by as much as three to ten days because the invoices themselves were prepared in Los Angeles by Signal Oil and Gas Company.

[4764] Cross-Examination

By Mr. Tilbury:

[4766] Q. (By Mr. Tilbury) Now, I believe you indicated during the period of our claim that Signal Oil and Gas owned sixty per cent of Western Hyway, is that the percentage? [4767] A. That is correct.

Q. Did that continue to be true throughout the entire period? A. I think it did through 1957.

[4771] Q. By that amount.

Would you know, Mr. Grover, whether Western Hyway bought any products from any supplier other than Signal Oil and Gas Company in the State of Oregon, that is, in the northern part of Oregon, during our claim period? A. I don't think they did during the period of your claim.

[4772] Cross-Examination

By Mr. Hall:

Q. May I ask, is this Western Hyway a sixty per cent controlled subsidiary of Signal Oil and Gas during the [4773] claim period, is that correct? A. That is correct.

[4774] Q. (By Mr. Hall) I may have left out a verb or two. Would you kindly describe the Western Hyway in relation to Signal Oil and Gas Company. A. Western Hyway Oil Company served the function as a wholesale distributor, I suppose, would most clearly describe them, of petroleum products which made delivery to given retail units and also to subdistributors and jobbers.

Q. And it delivered through this flow you described into Oregon, is that correct, Western Hyway? A. That is correct.

Q. Now, you have also mentioned, I believe, I believe you mentioned the Regal Petroleum Company, is that correct? A. No, we didn't mention it at all.

[4775] Q. All right. You mentioned Regal Stations Co.? A. That is correct.

Q. Are you familiar with Regal Petroleum Co? A. Yes; indeed.

Q. What is the relation of Regal Stations Co. to Regal Petroleum Co.? A. No relation.

Q. Is Regal Petroleum Co. related to Signal Oil and Gas Company? A. Yes.

[4776] Q. (By Mr. Hall) Now, you described the Regal Stations Co., did you not, as operating various retail stations in Oregon, including the Portland area? A. That is right.

[4780] Q. (By Mr. Hall) I will ask does that refresh your memory as to whether or not Regal Stations Company was handling the retailing in Oregon? A. This happens to be the 1957 annual report of Signal Oil and Gas Company to its shareholders. The statement made here on page 20 indicates Regal Petroleum Company. Now, in 1957 there was no such organization to my knowledge, and I have been the auditor continuously since their inception of all of the Regal companies. It says "Regal Petroleum



Company, the retail marketing subsidiary with outlets," et cetera, et cetera, in multiple states. I think this statement [4781] itself in that shareholders' report is in error. It should be read "The Regal Companies" because they had dozens of them.

Q. That included Oregon, those states you mentioned, right? A. One corporation in Oregon, correct.

[5002]

Allen Lee Shepard

was thereupon produced as a witness in behalf of the defendant, and, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Hilliard:

Q. You are Mr. A. L. Shepard? A. Yes, sir.

Q. And where do you live, Mr. Shepard? A. I live in Los Angeles.

Q. And do you have any connection with the oil business? A. Yes, I do.

Q. What is that? A. I am manager of the subsidiary operations for Signal Oil and Gas Company.

Q. Signal Oil and Gas Company? A. Yes, sir.

Q. And that your offices are in Los Angeles? A. Yes, they are.

Q. Now, prior to your present position then in management of the subsidiary associations, what capacity did you occupy with the company? A. Prior to entering the marketing department, I was in the accounting department.

Q. As a result of your connection in the accounting department, you were prevailed upon to fly up here yesterday? [5003] A. Yes, sir, I was.

Q. I wonder if we may show the witness this box of exhibits, 85. It is under the desk right here, this table right here. (Illustrating)

Mr. Tilbury: By the way, would you separate out the Oregon ones. I think the Washington—I think they are in the other box next to it, if you want them.

Mr. Hilliard: May I go up—

Mr. Tilbury: I think there is another box too.

Q. (By Mr. Hilliard) Would you look at those records in front of you and tell us what they represent? A. This one I am looking at is for January, 1957, and is a journal entry setting up the cost of sales of gasoline for the month of January. It also sets up an adjustment to cost of sales which depicts an additional anticipated reduction.

Q. Let me see if I can follow you. I have only one copy here at the moment.

(Whereupon, Mr. Hilliard walked up to the witness stand.)

[5004] Q. (By Mr. Hilliard) Do you have an entry in ink; what do you call this, a journal? A. A journal, yes, sir.

Q. Any other classification, or just a journal? A. Just a journal, a journal entry.

Q. And what is the entry written in ink? A. This entry reads "To adjust motor gasoline cost of sales and liability to Standard Oil Company for estimated sixty-five hundredths per gallon recoverable pending final agreement."

Q. And the date of that journal is? A. For the month of January, 1957.

Q. And each of your subsequent months, would you check to see if you have a similar type of entry? A. Yes, sir.

Q. Looking at February, is the language—do you have a journal entry with the same language? A. Yes, it appears to be identical.

Q. All right. Would you check through each month; that is February you just looked at? A. That is February.

Q. And March? A. March. It has a similar entry.

Q. A similar amount as to the others? A. Sixty-five hundredths of a cent per gallon.

[5005] Q. And the language is an estimated sixty-five hundredths of a gallon? A. Yes, sir.

Q. Would you check to see if they are the same? A. This is the month of May, 1957. It has a similar entry, similar information.

Q. You say April comes under the theory? A. It has the same wording, the same amount.

Q. June is the same? A. Yes; sir, it is the same. Yes.

Q. September is the same entry? A. The same entries in September.

Q. October? A. The same entry.

(Whereupon, another document was handed to the witness.)

A. November, the same entry.

Q. Then December? A. December also has the same entry, yes.

Q. Now, you have there in each instance described that as "Estimated sixty-five hundredths of a cent per gallon adjustment," could you tell us why you use that reference to that term? A. Why we used that amount for this?

Q. Yes. A. Originally, we received an adjustment in the early part [5006] of January, 1957, which covered a prior period of nine months, I believe, and the adjustment at that time, the amount of money received divided by the number of gallons covered by the period computed to sixty-five hundredths of a cent per gallon, and we felt that this was a fair statement to use for my projected adjustments we might receive.

Q. As in the Accounting Department, did you know what the exact adjustment would be at that time? A. No, we did not.

Q. The exact workings of the formula? A. No, we did not.

Mr. Hilliard: There has been received in evidence—oh, excuse me. Could you hand the witness Exhibit 1550C-2?

The Clerk: 1550—

Mr. Hilliard: C2.

The Clerk: C-2.

[5007] Q. Now, on the third—you see the heading on this 1550-C-2. Is that the number on the exhibit you have?

A. 1550-C-2, yes, sir.

Q. And there is a Signal Oil and Gas heading under page of Ethyl gasoline. Do you have that in front of you?

A. Yes.

Q. Then there is a date column, the next column "Will-bridge Posted Price, ex Tax", then a column "Contract Discount". A. Yes, sir.

Q. Then the following column is adjustments, and you will note starting at 1-1-57, the adjustment shown is sixty-six hundredths of a cent per gallon. Do you follow that?

A. Yes.

Q. And that continues on through March 31, '57? A. Yes, sir.

Q. Then it is from April 1 through June 30th, '57, the adjustment is shown as sixty-eight hundredths cents per gallon? A. Yes, sir.

Q. Then from 7-1-57 through December 2nd, '57, it is seventy-five hundredths of a cent— A. Yes, sir.

Q. —per gallon. Now, do those figures represent the actual adjustment received by Signal Oil and Gas from Standard for those periods? [5008] A. Yes, they do.

Q. Can you tell the Court and jury whether this represents—the sixty-six hundredths that ultimately becomes seventy-five hundredths of a cent represents the total adjustment, or whether the sixty-five hundredths of a cent entry of yours in an additional adjustment? A. This rate showing here from sixty-six hundredths to three-quarters—seventy-five hundredths of a cent was a total adjustment.

Q. And you can state positively that the sixty-five hundredths was not an additional adjustment? A. Positively.

Q. You have a record entry showing year-end calculations that would represent the actual adjustment you received as reflected by this schedule? A. Yes, sir.



Q. Is that in one of the folders in front of you? (Counsel approaches witness) Now, when you have these monthly entries at sixty-five hundredths of a cent per gallon, that represents the rate at which you were accruing this charge against Standard? A. That is correct.

Q. And at the end of the year, did you reconcile your records to show the actual— A. Yes.

[5009] Q. —amount received? A. We adjusted our anticipated estimated amount to the actual amount received.

Q. And the actual amount received was based on these actual rates of adjustment as shown by the figures just read off on exhibit 1550-C-2? A. That's right.

Mr. Hilliard: You may cross-examine.

#### Cross-Examination

By Mr. Tilbury:

Q. Mr. Shepard, I would like to ask you one or two questions concerning this. Now, the figures that you have read for 1957, they start, do they not, during '57? I appreciate there was one that you indicated in January which was retroactive in nature or something. At least it went back nine months. A. Yes, sir.

Q. Now, the figure that you have during 1957, do those adjustments start at sixty-six hundredths of a cent and proceed upward to three quarters of a cent? A. Yes.

Q. And the figure you have in the journal vouchers are indicated to be computed at the rate of sixty-five hundredths of a cent? A. That is correct.

[5010] Q. Would you mind, please, telling me why the different figures appear on the journal voucher as compared with the other notations? A. The sixty-five hundredths of a cent figure we used in the monthly journal entries was an estimated amount on the recovery we might receive or allowance we might receive. And we used this figure constantly, knowing that there would be very little difference between this estimated amount and our actual amount, and it was adjusted annually.



Q. I see. So, in fact, when the final adjustment took place, it was raised to the higher amount, the seventy-five hundredths; is that the case? A. The total was not seventy-five hundredths, but for that particular period—

Q. Yes. A. —it would affect the overall adjustment.

Q. Yes. You corrected me, and I think that's right. In other words, it was seventy-five hundredths for the last one half of the year in the way in which it eventually worked out? A. Yes.

Q. In dollars, does that amount to something over \$600,000? A. Yes, sir. I was just looking at this journal entry, and it amounts to \$618,000.

[5011] Q. Is that \$618,363.21? A. Yes, sir.

Q. Now, just for point of clarification, that, I assume, applied to your operation not just in the Pacific Northwest but that included your California sales, Arizona sales, or I should say purchases from Standard of California? A. These were total gasoline purchases from Standard of California in all areas.

Q. Mr. Shepard, would I be approximately correct if I said that about 10% of your overall purchases were made directly in the States of Oregon and Washington during the '55 through '57 period? A. I don't believe I know the exact number of gallons sold in Oregon.

[5013] Q. (By Mr. Tilbury) Now, in the adjustment that Mr. Hilliard asked you about that was given in January, I believe, of 1957, Mr. Shepard, do you know whether or not there has been some discussion concerning that allowance prior to January of 1957? A. I assume they had.

Q. In other words, was this something that your company was aware might happen in January, even though it wasn't ultimately paid until January?

Mr. Hilliard: Your Honor, I object to this as being the accounting and not the negotiation of it.

The Court: Well, he can tell whether he knows or not.

Mr. Hilliard: Oh, that is right.

The Witness: I do not know.

[5014] Q. (By Mr. Tilbury) Well, the reason I am asking, I noticed in your records for 1957, you had been indicating, I believe, every month an estimated—I believe it is called on these records that have been identified a sixty-five hundredths cents per gallon— A. Yes, sir.

Q. —adjustment. In other words, I would assume that—well, is it not a fact that even during 1957, the money wasn't paid every month but was, in fact, paid in some sort of lump payment later? A. I believe that is correct.

Q. Was there a lump payment, for example, on the third quarter of something like \$170,000? A. I can't remember the exact amount, but I believe it was paid quarterly.

Q. Now, did Signal Oil and Gas ask for a larger adjustment even than the seventy-five hundredths cents? A. I don't know of my own knowledge, but I assume they did.

Q. For example, did the Signal Oil and Gas ask for an adjustment of something over one cent for the third quarter or perhaps earlier than that as well? A. I wouldn't know the exact amount.

Q. Were most of these negotiations and the like by Signal Oil and Gas, were they conducted by the highest [5015] officers in your company? A. I assume so, but there again I wouldn't know.

Q. All right. For example, Mr. Mosher, Mr. Green, Mr. Marsh, did they do quite a bit of it to your knowledge.

Mr. Hilliard: Your Honor, the witness has said he doesn't know.

The Court: I could not hear the question. May I have it, please.

(Whereupon the Reporter read back the last pending question.)

The Court: He may answer whether or not he knows.

The Witness: I don't know.

Q. (By Mr. Tilbury) Does Mr. Mosher own something like 52%—

The Court: He said he—I beg your pardon.

Q. (Continuing) —shares of your company? A. I wouldn't know.

Q. All right. Is it possible there may be some kind of adjustment that would not necessarily be reflected upon the records of your company? A. There is no adjustment that I know of that wouldn't be reflected in our accounting records.

[5016] Q. Could you tell me, please, the over \$600,000 adjustment, what period did that relate to? A. That was the year 1957.

Q. Just during that year? A. Yes, sir.

Q. Was that computed on a monthly basis and on the percentages that I believe you have already indicated? A. Yes.

Q. Do you have the journal vouchers for 1956, Mr. Shepard? A. No, I don't. This is 1957 here (indicating).

Q. Now, just so I am clear on this point, in case there is any doubt, the adjustment factor of .65, did that relate to the period from July 1, '56 to December 31, 1956?

A. In 1956 I don't believe we made any adjustment until we were advised and received a check in January of 1957.

Q. As far as the accounting office is concerned? A. That is correct.

Q. All right. In what amount was that check, do you recall, or would you have information? A. It was a \$300,000 figure.

Q. Now, was there an adjustment earlier than the month of July, 1956? [5017] A. I know of no adjustment.

Q. (By Mr. Tilbury) Oh, incidentally, is this 300,000, is that in addition to the \$618,000? Are those two separate checks we are speaking of? A. Yes, sir, two separate periods.

Q. Well, perhaps I could just shorten this up with regard to the prior period. If my notes are correct, and I hope counsel will correct me, 23-C indicates—perhaps you could—I think it is on page 3 or so of that, so I won't be misquoting it. (Bailiff hands exhibit to witness.) Mr.

Shepard, I realize this is probably a strange document to you, but on the next page, what would be normally the second page but which is labeled, I believe 28-A, in paragraph number D, Standard has listed certain temporary additional discounts extended to the Signal Oil and Gas Company. Do you see the paragraph that I have reference to? A. Yes, I do.

Q. Now, Mr. Shepard, I believe that you will find on the fourth line that Standard makes reference to an adjustment of fifty-two hundredths of a cent beginning on March 1, 1956 and ending with June 30, 1956? A. Yes, sir.

Q. Were you aware of this adjustment, if it occurred? [5018] A. No, this is a retroactive adjustment of \$300,000 I spoke of.

Q. But it is computed at a fifty-two hundredths of a cent ratio, whereas the balance is at sixty-six hundredths?

Mr. Hilliard: Counsel, you can read it. It is sixty-five hundredths, not sixty-six. Why don't you read the whole thing? It says, "Fifty-two hundredths of a cent from 3-1-56 to 6-30-56, and sixty-five hundredths of a cent from 7-1-56 to 12-31-56."

Mr. Tilbury: Yes, I—

Mr. Hilliard: It covers that entire period.

[5019] Mr. Tilbury: I will concede you read it correctly.

Q. (By Mr. Tilbury) What I was asking, unless my notes are mistaken, I thought you indicated you were not aware of an adjustment prior to July of 1956? A. The first I heard of any adjustment was when I received the check in January of 1957, which was retroactive to this opening period of 3/1/55.

Q. All right. Was that check in January of 1957, was that computed at the rate of 65/100ths of a cent? A. Approximately.

Q. All right. A. I believe we determined that it was close enough to 65/100ths to use as a factor.

Q. Did you use the same factor for all purposes which went into this three hundred thousand dollar check? A. The three hundred thousand dollar check was an actual



computation, whereas the 65/100ths was future estimates for 1957.

Q. Was it all based upon gallonage that had been sold in the preceding period? A. Yes, sir.

Q. Well, to get back to my other question, if your computation and the one for which the check was received in January of 1957 was computed at 65/100ths of a cent, was that the uniform computation to that gallonage?

[5020] Mr. Hilliard: I object to that, Your Honor. The witness has said that that was the closest figure and he picked it for the estimate in the future. He just told counsel it was future estimate, it was based on 65/100ths of a cent.

The Court: Let me have the question.

(Whereupon the reporter read the previous question.)

The Court: You may answer that.

The Witness: I am not sure I understand the question.

Q. (By Mr. Tilbury) In other words, in the computation of the check received, as I understand it, in January of 1957, Mr. Shepard, which I believe you indicated to be something over three hundred thousand dollars, was that figure arrived at by multiplying the gallonage for whatever the preceding may have been times a 65/100ths per cent or 65/100ths of a cent factor? A. I believe it was distributed based on the findings here. There was a portion of the gallonage at 52/100ths and a portion of the gallons at 65/100ths.

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[5021] Q. Would you have the figures in terms of gallonage on which the \$618,000 were based? Would you have the total number of gallons there? A. It is possible it is reflected in all of these various journal entries.

Q. There is no summation in any of your entries that you have brought? A. No, sir.

Mr. Hilliard: I believe, Your Honor, he didn't bring—we brought these up, or you brought these up after the deposition, not this witness. He didn't bring these.



Mr. Tilbury: I thought perhaps ne might know. I am not trying to make him do a lot of arithmetic.

Q. (By Mr. Tilbury) Would it be correct in saying this, that as far as the over-all gallonage in all locations, that the gallonage would be in excess of eighty million gallons for 1957? Would you recall offhand, Mr. Shepard, if that figure would be somewhere in the ball park? A. I would say it would be.

Q. Would it be less than one hundred million gallons over-all? A. Yes.

Mr. Tilbury: I believe that is all. Thank you, [5022] Mr. Shepard.

#### Redirect Examination

By Mr. Hilliard:

Q. In connection with these allowances counsel asked you about, Mr. Shepard, can you tell us whether or not Signal Oil and Gas during this period ever received a freight allowance from Standard Oil Company? A. No, sir, we never did.

Mr. Hilliard: That is all.

#### Recross-Examination

By Mr. Tilbury:

Q. May I ask how you made your entry in your journal voucher with respect to the adjustment for \$618,000; how was it entered, what sort of legend did you put on the entry?

Mr. Hilliard: That isn't part of the redirect, Your Honor.

Mr. Tilbury: Neither was your question a minute ago.

Mr. Hilliard: It was too.

The Court: He may answer to test the bookkeeping system, that is all. You may answer what type it was.

The Witness: May I have that question again, please.

Q. (By Mr. Tilbury) How did you enter this in the journal voucher, Mr. Shepard, or whoever made the actual entry under your supervision, I assume? How is it [5023] identified? A. It actually reflects the total amount.

of money received for the year 1957 as compared with the amount that we had estimated.

Q. Do you call it a subsidy credit, is that the term used on the journal voucher? A. It is called subsidy credit on the journal voucher.

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[5159] Mr. MacLaury: Your Honor, our last item today would be the reading of the deposition of Mr. Gray.

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[5160] (Whereupon the reading of the deposition was commenced, Mr. MacLaury reading the questions, and Mr. Hilliard reading the answers:)

“Direct Examination

By Mr. Tilbury:

Q. Would you state your full name for the record, Mr. Gray? A. A. D. Gray.

Q. What do the “A” and “D” stand for, Mr. Gray?

[5161] A. Andrew Douglas Gray.

Q. And your position, sir? A. Manager, refinery bulk sales.

Q. Of what company? A. Union Oil Company of California.

• • • • •

[5162] Q. What was your particular line of responsibility as manager of the Refiner & Jobber Sales? A. The sale of unbranded products, petroleum products.

Q. Would this be throughout the operating area of the company? A. Yes.

Q. This would be over-all supervision. A. Right.

Q. Did you have occasion to deal with the Signal Oil and Gas Company from time to time? A. Yes.”

• • • • •

“Q. Did you have a particular way of identifying the Signal Oil and Gas Company in terms of its classification

as far as your company was concerned? A. Well, they were a large buyer of petroleum products.

. . . . .  
[5164] Q. During the years '55 through '58, did you have some contacts with the Signal Oil and Gas Company? A. Yes, sir.

Q. In what way did you have contact? A. Sale and solicitation of their petroleum requirements.

Q. Would you have had the primary responsibility of this company for dealings of that nature with Signal Oil and Gas Company? A. I had the prime responsibility, responsibility for the solicitation and acquisition of the business but not the final say insofar as the pricing or our policy were concerned."

Mr. Mac Laury: Would you skip over to page 7, please, Mr. Hilliard, line 11?

"Q. Would you have been familiar with any negotiations that might have been conducted by your company with the Signal Oil and Gas Company? A. Entirely so.

Q. This would be one of the responsibilities that you had? A. Yes, sir."

. . . . .  
[5208] "Q. (By Mr. Mussman) I will show you defendant's Exhibit 3 for identification which is a memorandum from you to Mr. F. K. Cadwell, dated October 14, 1957, and previously referred to by Mr. Tilbury. I will give you just a moment to look at it? A. Yes.

Q. Calling your specific attention to the next, to the last paragraph, you said that the information related to you in that paragraph was given to you by Mr. Zamlock? A. Yes.

Q. In accepting this information, you believed that Mr. Zamlock was telling you the truth? A. Yes."

Mr. Bonyhadi: Your Honor, excuse me. We will object to the reading of this portion because it relates to a docu-

ment which is not in evidence and to which we raise the same objection as stated.

The Court: It will be overruled.

Mr. MacLaury:

"Q. Calling your attention to the last sentence in the memorandum, Mr. Gray, you say 'May we also add [5209] that in our best judgment, the prices offered by us are the competitive level under which an account this size could purchase elsewhere.' A. Yes.

Q. Just exactly what did you mean by that statement?

A. I meant that irrespective, irrespective of Standard Oil Company competition that the prices we recommended be charged to Signal Oil and Gas were the competitive prices generally offered by others at that time.

Q. Did the fact influence you in your believing Mr. Zamlock when he gave you the information that is referred to in the next to the last paragraph?"

• • • • •  
"Q. How well did you know Mr. Zamlock, Mr. Gray?  
A. I knew Mr. Zamlock very well in a business way and socially.

Q. Do you know him in both ways? A. Yes.

Q. Over how many years? [5210] A. Over 45 years.

Q. During the period of 1954 on up until 1958, did you see Mr. Zamlock often? A. Did you say 'often'? Not as often obviously as during this.

Q. Did you see him regularly during the period of time with any regularity? A. During which period now?

Q. From 1954 on to '58? A. Yes.

Q. You saw him regularly—I just want to know about how often you saw him, once a year, twice a year, once a month, or once a week? A. At least a couple of times a month.

Q. In these meetings, did you take occasion to discuss with him the possible sale of products of Signal Oil and Gas by Union? A. Yes.

Q. As I understand it, your job during this whole period of time was in the department to which you are attached with the solicitation and sale of petroleum products to rebrand jobbers? A. Yes.

Q. It was in line with that duty that you had your discussions with Mr. Zamlock? [5211] A. Right.

Q. Do you generally know where Signal Oil and Gas sold both, most of its gasoline in terms of geographic areas? A. Within reasonable meets and bounds.

Q. Would you say—what was your standing? A. I just had a reasonable concept.

Q. Mr. Tilbury referred to the Pacific Northwest as Oregon and Washington; let us take Oregon, Oregon and Washington versus California. Do you know where the bulk of Signal Oil and Gas was sold? A. In the Bay Area.

Q. More than in the southern part of California? A. Yes, by far. Probably more in the Bay Area than all of the other places combined.

Q. In discussing possible sales of gasoline to Signal Oil and Gas by Union, were you interested primarily in the California area? A. Yes.

Q. For what reasons? A. Were more familiar with the market. We were closer to our products in the state of California and outside one sets his feelings and so forth; this always presents problems to us.

Q. As I understand your testimony here in answer to [5212] Mr. Tilbury's question you did from time to time discuss with Mr. Zamlock possible sales then in the Pacific Northwest? A. Correct. That's right.

Q. To your best recollection, Union's first sales to Signal Oil and Gas of California were made pursuant to that letter agreement I have identified as the Defendant's Exhibit 1? A. Yes."

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[5438]

Darwin Godfrey

was thereupon called as a witness in behalf of the defendant, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. MacLaury:**

Q. Where do you live, Mr. Godfrey? A. San Francisco.

Q. And you are connected with the Standard Oil Company? A. I was connected until sixteen days ago. I retired the first of this month.

• • • • •

[5440] Q. And then around 1931 and '32, you had occasion— A. Yes, I almost built right up to that point in these other matters, the Bitumen and Frozen Foods and things were behind me. And, in 1931 I had various jobs; and one day along about, I will say October of 1931, my then superior, Mr. Ralph Davies, a Vice-president of Standard, called me. [5441] We were both in Los Angeles at the time, and he said: "Would you come around to the Biltmore Hotel today for lunch. I want you to meet a couple of gentlemen." I went around and had lunch that day, and the gentlemen I met, Mr. S. B. Mosher, President of Signal Oil and Gas Company, and Mr. G. W. March, Vice-president in charge of marketing for Signal Oil and Gas Company. The Signal Oil and Gas Company at that time was engaged in a very limited way in the marketing of motor gasoline and lube oils and related products of the company. The company basically had been a natural gas company.

Q. Would you explain what "natural gasoline" is? A. Yes, that's the lighter fraction that is produced in conjunction with the production of crude oil. This company, Signal Oil and Gas, had contracts where they could extract these lighter fractions from the crude products originally around Signal Hill, as I recall it.

Q. I see. [5442] A. (Continuing) But it is a stock that is used in blending with the straight run product which is made from crude oil to make the final mode of gasoline the company uses on their cards. Well, this was the inception of my meeting with the Signal Oil and Gas people. I had explained their marketing, and they had only been in the market of motor gasoline at that time for a matter of a couple of years. And their market had grown to about two million gallons a month, and that was the maximum of the gasoline they could produce from a very small two product refinery. By that I mean a refinery that merely made fuel oil and motor gasoline.

[5443] Q. Would I be correct in saying then that you made an arrangement and bought the contract with the Signal Oil and [5444] Gas Company whereby Standard Oil Company would buy their crude oil and natural gasoline and in turn Standard would sell to Signal Oil and Gas Company finished motor gasoline? A. That is correct. I negotiated those contracts under my superior, of course, Mr. Davies.

Q. About when was the first contract concluded?

A. I do not remember the day, but it was in January of 1931—no, January of 1932 that the actual contract was completed and executed.

Q. Then after that, did you continue your contacts—  
A. Yes, I did.

Q.—with the Signal account? A. After the contract was signed, Mr. Davies said to me, "All right. Now that you got the contract signed, you will be the contact man or the account executive with that account." And from then on, over the years, I have had [5445] very very close contact with the people of Signal Oil and Gas Company.

Q. Now, this contract—or was it two contracts that you negotiated in 1932? A. It was actually three. One was a contract to purchase their natural gasoline, the other was

to purchase what little crude oil they had, and the third was to supply them their requirements. And I'm sure there were quantity limitations in it, but I don't remember what they were at that time of motor gasoline. ●

Q. Now, were these three contracts, were they amended from time to time as the years went by? A. Yes. I remained on that particular assignment possibly into, oh, mid '33, mid 1933. At that time, while I maintained a friendly relationship with these people, I didn't actually handle the account because I had another assignment. For several years, I was the contact man for Standard with the various committees involved in the Richfield Oil Company's reorganization. Richfield then was in receivership in Federal Court, and Standard was dealing with the various creditor committees hoping that we could make an arrangement to acquire Richfield. I spent several years there, but that did not materialize. As every one knows, Richfield is a separate outfit.

. . . . .

[5446] Q. Now, having been reassigned to the Signal Oil and Gas account in about 1938, did you have occasion to renegotiate [5447] the then existing contract? A. Not right at that stage. If I remember correctly, and I'm sure I'm very close to being correct, the contracts had been extended or rewritten in 1937, and those contracts were for a period of ten years. And inasmuch as they were extensions of previous contracts, why, the contracts were until the end of 1948. But by this time the Signal Oil Company had grown very, very substantially. They became a very large producer of crude oil, which crude, of course, was delivered to the Standard Oil Company. And our refineries were geared, of course, to that volume of crude oil. We actually had to have it to meet our commitments. And, of course, we could not and I'm sure the Signal Oil and Gas people could not just rock along under the existing contracts until 1948 without knowing where we would go from there, whether they had to find

a new purchaser or we had to find a new supply. So I started in 1945.

Q. About 1945, approximately what was the quantity of crude oil being purchased by Standard from Signal Oil and Gas at that time? Just an approximation, if you can recall. A. I would say for 1945, it was possibly on the order of 40,000 barrels a day. I could be quite accurate a couple of years later, but on that particular date I am not so sure.

Q. What prices did Standard pay to Signal? A. The posted price for the crude oil for the gravity and [5448] the particular field involved.

Q. Did Standard ever pay a premium or a bonus? A. Not to my knowledge, never. Standard never paid a bonus for crude oil from anybody.

Q. All right. 1945, is that after the war was over that you commenced renegotiating— A. That's right.

Q.—the arrangement with Signal Oil and Gas Company? A. That is correct. And when I say "I negotiated", I think I used the word further back "participated", I do not mean I was all alone in the negotiation. My principal at that time was Mr. T. S. Petersen, a vice-president of the Standard Oil Company.

Q. He was your boss? A. He was my boss. And my title at that time was assistant to the vice-president. He actually carried on the principal negotiations, but I was with him, I think, on every occasion that we met with him and participated in them and did most of the said work.

Q. Well, now, in these negotiations for the renewal of the existing contract in 1945, would you just give us the highlights of that and the problems, if any, and how they were solved, if they were? A. We still have involved three basic contracts. There was no particular trouble in reaching a conclusion as to [5449] the purchasing of their crude oil from them. That again would be on the basis usually followed in the industry at posted prices in the particular field for the particular gravity. And there was no par-



ticular problem in connection with the purpose of their natural gasoline. Again, that pretty well fits a formula of posted prices. Well, we ran into great difficulty in connection with writing a new contract or renewing the old contract for motor gasoline. The Signal people were insistent upon a longer discount, or to put it another way, a lower price than we were willing to sell the product to them for. These negotiations continued from the start in 1945 until, oh, mid 1946. I think the negotiations fit the pattern of most negotiations. At the outset, possibly we met once a month, and then the tempo stepped up a couple of times. Before long we were meeting weekly, and finally almost daily. And that brings us, as I say, to roughly mid 1946. And here is an interesting little side light, and that's probably why it is so firm in my memory, and it explains why we went in the direction that we eventually went. But we had been meeting this particular day in the office of O. W. March.

Q. Would you identify O. W. March again? A. He is a director and vice-president in charge of marketing for Signal Oil and Gas Company. He was present, Mr. S. P. Mosner, was present this day, and Mr. T. S. [5450] Petersen. We had started discussions early in the morning. We had gone to lunch together. We had returned to the office. They were still demanding a lower price for gasoline than we were willing to offer them. It came to be dinner time, possibly 7:00 o'clock at night, and we decided to go to dinner together. This is the interesting thing that I referred to a minute ago. We had two automobiles there. If we hadn't, the answer might have been entirely different. But in going out to dinner, Mr. Mosher and Mr. Petersen went in one car, and Mr. March and I went in the other car.

[5451] Q. (By Mr. MacLaury) Mr. Mosher, again, he was the— A. President and top man of the Signal Oil and Gas Company.

Q. All right. A. And we went out to the restaurant, and



what March said to me—"Darwin, what are we going to do; we are never going to agree on this thing."

Q. (By Mr. MacLaury) Will you proceed, Mr. Godfrey. A. Bud March wanted to know what we were going to do. [5452] We had been carrying on these negotiations for a year and they were adamant for a lower price, we were just as adamant that we weren't going to give them a lower price, and so I said, "Bud, if you will go along with me when we join this other gentleman"—that was Mr. Mosher and Mr. Petersen—"at dinner, I will stick out my neck and propose that we drop these negotiations and start to discuss buying you out." And he said, "I will go along with you."

Q. Now, at that time Signal really had two activities, the production of crude oil and natural gasoline? A. Yes. And in buying out, I am talking about only their marketing end. There was no problem in contracting to buy their crude oil and natural gasoline. He agreed to that, and, when we got to the restaurant, I threw that, what turned out to be a bombshell, but after people had thought it over, why, to make a long story short, that is the direction we went. It took us another year to evaluate and negotiate a valuation at which we finally did purchase the marketing business and the marketing facilities of Signal Oil and Gas Company.

Q. And those facilities, they consisted largely of retail stations, did they? A. No, they were everything related to a going marketing company. They had a number of bulk plants and commission distributors, and, of course, all the motor equipment and [5453] everything that went with that, and of course service station outlets. Possibly some relatively few owned, most of them I think were leased at that time. And then we came to—

Q. (Interposing) By the way, did you participate in the evaluation of these retail stations that were obtained from Signal Oil and Gas? A. I didn't actually make the field

trips. Most of the figures actually were fed in to me and I arrived at the totals, yes. I was the responsible man in arriving at the value that I recommended to our people we would pay.

Q. Go ahead. A. Well, the negotiations got in their final stage and we had agreed on the purchase price for their marketing facilities and their business when Mr. Mosher threw another monkey wrench into the machinery.

This would have been about, oh, I would say, in June of 1947.

Q. Was this prior to the closing on the acquisition?  
A. Prior to the closing. We had all of the contracts pretty much in final form, they had been prepared by the attorneys. We had agreed on most all of the details. We had agreed on the purchase price, but then he insisted that we again contract and, by "we" I mean the Standard Oil Company again, contract to supply them motor gasoline so [5454] that they could again enter into the marketing business after having sold at that time all of the marketing business that they then had.

We protested that vigorously. We had trouble with the Board of Directors of Standard even considering it. Mr. Mosher was quite a competitor in negotiating; picked up his pencils and his papers and headed out of the meeting room on a couple of occasions, and so Mr. Petersen, my superior, said to me, he said, "Darwin, I think this fellow means this." And I said, "Well, I am convinced he does."

So we compromised on this matter of furnishing motor gasoline to them. We agreed that if they increased the amount of crude oil and natural gasoline which they delivered to Standard over and above the amount that they were then delivering, and that was approximately 45,000 barrels a day at that time, why then we would furnish a quantity of gasoline to them equivalent to the yield from the crude oil, and we specifically spelled that out in the contract as thirty per cent.

I think there were some tenths on it, but that was roughly it.

In other words, if they delivered to us more than 45,000 barrels of crude oil, we would give them a quantity of gasoline equivalent to thirty per cent of that excess.

Q. Thirty per cent? [5455] A. Of the excess over the 45,000 barrels a day, and we also put in there that under no circumstances would we be obligated to deliver to them more than six million gallons a month of motor gasoline.

Q. Now, was crude oils still in 1946 an important factor to Standard?

. . . . .  
The Witness: I would say that it was the vital thing in the whole transaction. Standard simply had to have that crude oil. In fact, I think I can pinpoint it by informing the Court and the jury and all concerned, it is very, very vivid in my memory when I was made president of the Signal Oil Company, I was told by Mr. Petersen and Mr. Sawyer, a name you haven't heard before, he is the gentleman from Standard Oil that went from Standard Oil to Signal with me as the financial man, the secretary and the treasurer, and he and I were both instructed by Mr. Petersen that while we were certainly to do a good job in running the Signal Oil Company that we had just acquired, our main job was to maintain good relations with the Signal Oil and Gas people. [5456] so that we would under no circumstances jeopardize that supply of crude oil. We had to have it or we could not have met our commitments.

Now, I think maybe Standard, if it had been resourceful, could have found some way, but we knew of none at that time.

Q. There has been some confusion, particularly the first part of this case, about Signal Oil and Gas Company and Signal Oil Company.

Now, you have just indicated that you were made president of the Signal Oil Company. Would you explain just

briefly how that organization was formed after the acquisition of these assets of Signal Oil and Gas, and what Signal Oil and Gas had left, if anything? A. I would be very happy to.

As I recall it, the marketing conducted by Signal Oil and Gas Company was conducted by a wholly-owned subsidiary of theirs, Signal Oil Company, a California corporation. Standard Oil Company did not buy that company, as I am careful to state here, the transaction was that we bought the business and we bought the facilities, we did not buy the corporate structure. We formed a company of the same name, Signal Oil Company, a Delaware corporation, and then when we acquired all of these facilities, trademark, everything, everything that went with the marketing, they were placed [5457] into the Signal Oil Company, a Delaware corporation. That was the new subsidiary of Standard Oil Company of California, and it is that company that I was made the president of.

Q. I see. And did the Signal Oil and Gas Company continue in existence? A. Oh, yes, the Signal Oil and Gas Company at that time was a very, very substantial thing, its marketing was a relatively small part of their business. They basically were crude producers and natural gasoline producers, and under these contracts that we had entered into, they continued to sell their crude oil and their natural gasoline to the Standard Oil Company. It was merely a contractual relationship. All that we had acquired was the marketing end of their business.

Q. Now, you mentioned that then Mr. Mosher, I believe it was, insisted again before this closing of this transaction whereby you acquired, Standard acquired these facilities, he insisted still on a supply of gasoline? A. That is correct.

Q. And you say you compromised by giving him an agreement to provide him with a limited amount? A. A limited quantity provided they step up their supply of crude oil to us. We were unwilling to furnish back to

them quantities unless they increased their deliveries to us. [5458] Q. As part of the closing and the acquisition of these assets, did Standard sign or execute a contract for purchase of crude oil by Standard and another contract and sale of gasoline by Standard? A. Oh, yes.

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Q. I see. Now, what arrangement did you have with Signal Oil and Gas concerning the name "Signal" as it applied to marketing of gasoline? A. We had a separate letter agreement on that. I think I probably worded it, worked with the attorneys that did the [5459] wording. The wording was this, that they agreed not to use the word "Signal" either alone or in conjunction with any other words in the marketing of petroleum products.

I think those are almost the exact words.

Q. Now, did you have in your contract a provision which required Signal to use its own brand names and not Standard's brand names in the marketing of gasoline? A. Yes, that is in this contract. It is right up in the first paragraph.

Q. Now, do you remember how long a term was this contract? A. This particular contract was firm at that time for about five years. It could have been cancelled on six months written notice by either party, but the notice couldn't have been given prior to July 1, 1953.

Q. So, by 1953, it was no longer a firm contract, it could be terminated by either side on six months notice? A. Yes, it is what we call an Evergreen contract.

Q. Now, did you have some further experience negotiating with the Signal Oil and Gas Company after this contract was signed? A. Yes, it seems to be the story of my life, negotiating with those people.

In 1952, and that would be a year before the parties had the right to serve a termination notice under this contract, T. S. Petersen, who had then become the president of [5460] the Standard Oil Company of California, asked me if in addition to my duties as the president of our Signal



Oil Company, if I could undertake to start negotiations for a new contract with Signal Oil and Gas Company.

Q. That was in 1952? A. Yes, I imagine that year, I don't remember just when.

Q. And then did you do so? A. I started then, yes.

Q. Just briefly, what were your procedures? Who did you contact and how— A. Oh, my main contacts, of course, were with Mr. O. W. March, the vice president of marketing, in the same way that Standard had assigned me this job, why the Signal Oil people asked Mr. Mosher, the president, and the others had given the job to Mr. March, with the hope that the two of us could agree on most of the terms of a new agreement before they were submitted to our respective boards.

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[5461] Q. (By Mr. MacLaury) Well now, skipping over as rapidly as you can and hitting the highlights on these preliminary negotiations to get into the year 1955, were there any particular highlights that you think you should touch between '52 and '55? A. No, I can state very briefly that I commenced the negotiations with Mr. March. We were initially working on three contracts, just like that existed before, one for crude oil and one for natural gasoline and one for motor gasoline. Along the line we consolidated those into one draft of the contract and as before, we had very, very little difficulty in agreeing about the conditions under which we would buy their crude oil and their natural gasoline.

Q. Now, Mr. Godfrey, would you look at Exhibit for identification in front of you 1704. Now is that a memorandum that you wrote to Mr. Vesper? A. Yes.

Q. Now, identify Mr. Vesper for the jury in connection [5462] with this subject, please. A. By this time I was reporting to Mr. Vesper. He was then the vice president of the Standard Oil Company of California, Western Operations, Incorporated. And that was the affiliate or a subsidiary of Standard that had to do with operations all through the area which is involved here.

Q. Did you write this memorandum dated March 18, '55? A. Yes, I wrote this.

Q. Did you write it during the period of your negotiations with O. W. March, who represented Signal Oil and Gas? A. Yes.

[5463] Q. (By Mr. MacLaury) (Continuing) What was your—you had some particular problems in negotiations with Mr. March; you had a particular problem in connection with this gasoline? A. Yes, there was a continuing problem. It wasn't exactly the same problem we had years before that led us to buy their company, their marketing business. Now, we were up against the same thing again. They were demanding a lower price on gasoline. They were at this time and prior to this during this period of '52, '53, '54, informing me that they would be able to buy gasoline from other suppliers cheaper than we were willing to sell it to them.

Q. Did they name any of those other suppliers? A. Yes. As I recall it, back in the prior time, they were talking to Hancock, Norwalk. Oh, I think Richfield was mentioned at one time and Rocket.

Q. Now, when you wrote—did you write this memorandum at about the time you had the conversation to which you refer? A. Oh, well, yes, it was probably the day following the final of this several days conversation. I have said here: "During the past few days, I have spent several hours with different ones." It was written right at the time.

[5465] Mr. MacLaury: If I might read this memorandum at this time, Your Honor?

The Court: Surely.

Mr. MacLaury: This memorandum is dated Los Angeles, California, March 18, 1955, and it is written by Mr. Godfrey

to his immediate superior, Mr. H. G. Vesper. It is headed "Signal Oil and Gas Company."

"During the past few days, I have spent several hours with Bud March, during which time Sam Mosher was present for a few minutes."

Mr. Mosher's only comment apropos of the contract situation was to express again his view that 'tank truck price means absolutely nothing to anyone but Standard.'

The following summarizes the statements of Mr. March to me:

He is very 'disappointed and hurt' that Standard did not grant his request for a temporary increase in [5466] margin of .5¢. He says it is a one-way street with SO&G Co. doing all the favors.

He is convinced that Western Hyway can get margins of 4.50-5.50¢ on a five-year firm deal for their gasoline requirements. (I suggested he check to see if the discounts are off the same posted price as ours or off higher posting such as Union.) At another point in the conversation he dropped that Hancock and Norwalk were the companies offering the above discounts.

He also said he was sure that SO&G could get up to 12,000,000 gallons, possibly 18,000,000 gallons per month for five years firm from a major competitor at margins of 5.00¢ and 6.00¢ off. This would mean that SO&G Co. would no longer buy gasoline from Standard. He states that they are seriously considering this. At one point, Hancock was mentioned. He claims he could get a deal with them, and he thought that a \$2,000,000 expenditure would increase Hancock's capacity sufficiently. He knew that Standard had turned

down Hancock's recent proposal on products and were currently discussing a crude oil deal.

Mr. March says that Messrs. McClanahan and Mosher are planning a trip in April. He wonders what it is all about. Mr. Mosher inferred that they plan to discuss [5467] the contract."

Signed, D. F. Godfrey.

Q. (By Mr. MacLaury) Now, Mr. Godfrey, this memorandum here mentions Hancock and Norwalk as possible suppliers of Western Hyway; would you identify those three companies, Western Hyway, Hancock, and Norwalk?

A. Yes, Western Hyway was an affiliate of Signal Oil and Gas Company. They were headquarters with their terminals in Sacramento, California. Hancock was an independent oil company at that time, and Norwalk was an independent, but, as I recall it, they belonged to Bank Line. I am pretty sure the Bank Line Oil Company. But, they were independent companies.

Q. Now, Mr. Godfrey, you have reported here a number of offers that Signal Oil and Gas stated they had; did you have reason to believe that Mr. March of Signal Oil and Gas was telling you the truth when he stated he had these offers from competitors of Standard? A. Oh, I didn't have the slightest idea about it. As I [5468] have testified here, I maintained a very, very close relationship with Mr. March and the rest of the Signal people since 1931, and I had absolute confidence in their integrity. I have never known those gentlemen to lie to me.

[5470] Q. (By Mr. MacLaury) Now, Mr. Godfrey, you testified about the negotiations of the contract that was eventually signed in July of 1947, which is Plaintiff's Exhibit 321 and Defendant's Exhibit 1007; through what areas—and this was a contract that provided for the pur-

chase and for the sale of gasoline by Standard to Signal Oil and Gas; now, to what areas did that contract apply? A. I don't have that exhibit back, but I can say it from [5471] memory. California, Arizona, Oregon, Washington, Idaho, and Nevada.

. . . . .

Q. Now, you were testifying that in 1955 you were negotiating a new contract with Signal Oil and Gas, a sale by Standard of gasoline to Signal Oil and Gas; did you ever, did you ever arrive at a draft of a contract submitted by Signal Oil and Gas? A. Yes, we did. This was based upon my discussions with Mr. March. Our own people actually drafted the document incorporating what March and I had arrived at. That draft was dated December 9, 1955, and I handed Mr. March copies of it on December 27th.

Q. You had better bring the speaker a little bit closer. A. I handed Mr. March copies of it on December 27th, 1955.

Q. And generally, just very generally, what was the form of that contract; how was it revised? A. This contract, that is, differentiating between the [5472] previous contracts, incorporated the three phases in one document. It was a purchase agreement whereby Standard would purchase from Signal Oil and Gas their crude oil; and another section, Standard would purchase their natural gasoline; and another section where Standard would supply to them, sell to them more gasoline.

Q. And how about the price clauses for gasoline that would propose that Standard sell to Signal Oil and Gas?

. . . . .

[5473] Q. Now, after you submitted your draft for the proposed contract in March or December of 1955, did you have further discussions with Mr. March's superiors? [5474] A. Yes, I—I talked with most of those people mostly



in the presence of Mr. March. And that would be in his office, and we were carrying on our discussions. I tried diligently to bring that thing to a conclusion. I ran into exactly the same snag that I ran into years before on the previous occasion, and that is that we were unable to agree on the price of gasoline, the discount for gasoline. They had these offers from competitors, other major suppliers, and the Standard Oil Company was absolutely unwilling to go that low in pricing to them, and they seemed adamant that they would not extend the arrangement without lower prices.

Q. Now, do you have in front of your defendant's exhibit for identification 1705? A. Yes, I do.

Q. And what is that? A. Oh, this is a letter addressed to me by Mr. O. W. March, vice-president of the Signal Oil and Gas Company. It is addressed to me as the president of the Signal Oil Company. That, of course, is an improper address there because in these negotiations, I had my other hat on. But for all practical purposes, it's all right. I was the negotiator for Standard Oil Company insofar as our relationship with Signal Oil and Gas Company is concerned.

Q. And— A. It is dated March 28, 1956, and what he says is this:

[5475] Q. Well, you can't say yet what he says, Mr. Godfrey, because that is not in evidence yet. A. I see.

Q. But does he mention there certain offers to Signal Oil and Gas? A. Yes. This is a tabulation to the effect that they have knowledge of price offers by major companies.

Q. To whom? A. They don't state, but I would be— looking at these locations and all, I would be pretty much convinced that the offers, at least in part, would be to their—well, probably across the board to their affiliate, the Western Hyway Oil Company.

. . . . .

Q. (By Mr. MacLaury) Now, Mr. Godfrey, this letter is [5476] addressed to you. Would you read that to the jury?

A. Yes. "Dear Mr. Godfrey: We have knowledge of the following offers to supply gasoline which have been made recently either by major oil companies or by companies that obtain their supply from major oil companies." And then there are several headings. The first heading is the company offering the price, the name of the supplier, the date of the offer, and the discount under Standard Oil Company's posted tank-truck, and specified for both the regular grade of gasoline and Ethyl gasoline, and defining the point of delivery.

The first item is Westway. That, of course, is an affiliate or a subsidiary of Union Oil Company. Union Oil was the supplier. It was an offer of March 21st, 1956, at five and two-tenths cents off for regular gasoline and five and eight-tenths cents off or Standard's posted price for delivery at Eugene, Oregon.

Q. Now, let me interrupt there and ask you at this time, March 28, '56, what were the prices that—what were the discounts off posted tank-truck that Standard was charging Signal Oil and Gas?

[5477] The Witness: Standard's discounts were the same as they have always been, four and a half cents on regular gasoline and five and a half cents on Ethyl gasoline, and in March of 1956, no additional discounts.

Q. (By Mr. MacLaury) All right. Now, the next item, would you read the offering company—the— A. Yes.

Q. —company offering the price? A. Westway, the same as before. Union Oil as the supplier, same date, 3—March 21st, and the discounts here, are four and one-tenth cents on regular and four and a half cents on Ethyl gasoline, with deliveries to be made at either Eugene, Oregon, or Medford, Oregon. The next one is Rocket, which is an affiliate of Richfield, a supplier. It's the same date. The

discounts offered here were three and nine-tenths cents on regular and four and four-tenths on Ethyl for deliveries at Medford, Oregon. The next supplier was Sunset, supplying Union gasoline. The date of this offer was March 23rd, 1956. The quotations were four and two-tenths cents off on regular and five and two-tenths cents off on Oleum—for delivery at Oleum. The [5478] next is Wilshire, which would be supplying Associated Oil Company-gasoline. The date of that offer was March 5th. The offered discount was three and ninety-five hundredths cents a gallon on regular and five and forty-five hundredths cent a gallon on Ethyl for delivery at Avon, California. And the next was Union Oil Company directly, offering as supplier on March 22nd, with offer of discounts of 4.4 for regular and there is no quotation for Ethyl, and that was for delivery at Union's terminal at Oleum.

Q. Oleum, California? A. Oleum, California. That is down around San Francisco Bay.

Q. Would you read the next part of the letter? A. Yes. "It is our understanding that Westway is now selling to the account at the price shown in the first offer listed above and that the second and third offers were quoted on the basis of being guaranteed for a period of one year. We believe the foregoing demonstrates that the price which we are now paying Standard Oil Company of California for gasoline is too high and we request an adjustment in that price to meet competitive conditions.

"Very truly yours, Signal Oil and Gas Company, O. W. March, Vice-president."

Q. Now, with respect to the first offer listed, the Westway offering price which named as the supplier Union and [5479] at a regular price of 5.2 on Ethyl, 5.8 off posted, did you at that time have any reason to believe that this report was a truthful report? A. I had every reason to believe it was accurate.

Q. Now, having in mind that this letter was addressed March 28th, 1956, and having in mind—strike that. Did

you continue your negotiations through March and April with the Signal Oil and Gas representatives to conclude this new drafted contract that you had— A. Yes. This was a continuing thing. I was not successful. I had many conferences with Mr. March trying to get the thing off dead center. I talked with Mr. Harms on several occasions. He was a Signal Oil and Gas Company attorney.

Q. How do you spell that? A. H-a-r-m-s. Pete Harms. And he says, "Our people aren't going to even waste their time considering the thing, and you fellows get realistic about the price of gasoline." So I had no luck at all of even getting a formal consideration of this contract, and the draft that they had had blanks in it as to the discount. We hadn't even put a figure in it. It was just a line that the discounts would be so much, because we were so far apart.

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[5481] Q. Approximately when? A. Oh, that would have been along possibly April, May, June, 1956. I don't remember just how long it took me to work up figures and make a presentation on it.

Q. During this period, did you have some discussions with Mr. Zamloch? A. Oh, I was having continuing discussions, of course. They had demanded that we give them a temporary allowance of a half a cent a gallon. We consistently refused to do so. I undoubtedly told him I was working on something that hadn't been approved by my people yet.

[5482] Q. By the way, who is Mr. Zamloch? Is that Z-a-m— A. l-o-c-h.

Q. Who is he? A. He was associated with Mr. March. I think at one time he had the title of manager of their distributor sales. Some such title.

Q. Now, did you have any—were there any reports made to you that Zamloch was in touch with the Union people from sources other than Signal Oil and Gas?

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Q. (By Mr. MacLaury) Were there any reports to you during this time, July—June or July, in the summer of 1956, that Mr. Zamloch had been in touch with the Union people?

. . . . .

[5483] A. Yes. It would be along about this time that Mr. Zamloch was telling me that—and continuing before this and after this—that they did have lower offers from other major competitors. But one day, and it would be about in that period, mid 1956, one of my associates informed me that he had seen Mr. Zamloch and Doug Gray of the Union Oil Company at lunch. And for a matter of two hours, why, I assume that they were—that Union Oil was the company to which Mr. Zamloch referred when he said he did have lower offers from another major oil company. But I didn't have to assume it very long, because that very evening I was present when Carl Zamloch was talking about it with Mr. Mosher, and he told him in my presence.

[5484] Q. What did he tell him? A. That they—that he had been talking with Doug Gray of Union, that they were willing to make a lower price than we were willing to make, and in my presence Mr. Mosher authorized them to go on the outside and buy elsewhere if they could buy cheaper than they were buying from us.

Q. Now, during this period, and we are talking still about the middle of 1956, did you have occasion to talk with the—certain representatives of Western Hyway who purchased from Signal Oil and Gas and Mr. Zamloch? A. Yes. It was probably a—a strategic maneuver on their part to convince me of these lower prices. . . .

. . . . .

[5485] Q. And what was one of the subjects of discussion at that luncheon? A. Well, the discussion at that luncheon was that these people who were customers of Signal Oil and Gas Company had direct offers from other suppliers



at prices less than Signal Oil and Gas Company was supplying them.

Mr. Hall: What is the time and place of this luncheon? I won't ask what was eaten.

The Witness: Exactly, I don't know, but as I mentioned yesterday, around mid-1956. I think I described it June or July, along in there.

Q. (By Mr. MacLaury) The city, the place? A. This was at the Jonathan Club in Los Angeles, just a block from our office.

[5488] (By Mr. MacLaury) Now, Mr. Godfrey, you mentioned the name of Richards, Roberts, and Zamloch and Nickell. Who is Mr. Nickell? A. Mr. Nickell was a long-time employee and vice president of the Signal Oil Company when it was owned by Signal Oil and Gas Company. He was one of several hundred people that joined the new Signal Oil Company in the subsidiary of Standard of California in July of 1947. And he was our vice president and general sales manager as he had been in the former company.

Q. How well did you know him? A. Very, very well, personally and in business over many, [5489] many years.

Q. And what was your feeling about the veracity of any statement he would say to you? A. Oh, there was no question that Wally would be factual with me on this. He had—just to tie this thing in because you kind of dropped Mr. Nickell in the middle—where did he get over here—he quit, he resigned from Signal Oil Company in the early 1950's to return to the Signal Oil and Gas affiliate, Western Hyway. In other words, he rejoined the Signal Oil and Gas group and he had a part ownership in the Western Hyway Oil Company, headquarters at Sacramento. But it is just commonplace every time, most every time Mr. Nickell would come to Los Angeles, I would be invited to join them for lunch. The same way, I knew the other people because I have been the contact man on this account

for many, many years, not only business associations but they are personal friendships.

Q. Now, after this luncheon with these four gentlemen, did you have further occasion on that day— A. (Interposing) Yes, I don't think I completed right here something that I think you should know, and that I testified to yesterday in the deposition, that I took the stand at this luncheon that it was all very, very interesting, but that I had just been invited to lunch and any quarrel that these gentlemen—by that, I mean Mr. Nickell, [5490] Robertson and—

Q. Richards? A. Richards—had was certainly not with me. Standard Oil Company wasn't their supplier. This quarrel was with Signal Oil and Gas Company and I was just an innocent bystander there that day.

But later that day, and the jury should understand that my office was on the 7th floor of a building at 811 West 7th Street in Los Angeles, and the Signal Oil and Gas occupied that same building, and Mr. March was down on the 2nd floor. That accounts in part at least for our very close association.

Late that afternoon, around 5:00 o'clock, I guess it was, he telephoned me and asked if I would drop down a while, and I went down and they were still pursuing the same battle that they were having at noon, except they were now in the presence of the top man, the vice president of marketing.

Q. Who was present, who all was present? The same people at lunch? A. Yes, there might have been some more. There usually were, but Mr. Zamloch was there and these other gentlemen, and there were some other people that shared offices there. It was frequent that other people were there. I don't remember, but they wouldn't be the ones involved in this. [5491] And I took the same stand that I had taken at lunch, but Mr. March's position was, unless he had a lower price from the Standard Oil Company, he could not give his customers a lower price.

Q. Now, you mentioned working on this problem and a formula that you had suggested to some of your superiors— A. Yes.

Q. —at Standard Oil Company concerning a possible higher allowance, was it, or bigger allowance to Signal Oil and Gas? A. That is correct. We knew that we would have to make some concession if we wished to write a new contract and preserve that crude oil supply for us.

Q. Now, what was the reaction of your superiors at Standard eventually to your suggestion? A. They approved making an adjustment.

Mr. Hall: May I ask what the time is on this?

The Witness: Yes, the approval—frankly, I don't remember exactly when they approved it, but it was not until January of 1957 that I was authorized to inform the Signal Oil and Gas people, Mr. March, of that, and at that time we gave them a check.

[5496] Q. (By Mr. MacLaury) Now, when was Signal Oil and Gas Company advised that Standard Oil Company of California would extend to it an adjustment on prices which had been prevailing in 1956? A. That would be in January of 1957. That is the memorandum that I hold.

Q. Now, is this—did this adjustment apply to prices charged by Standard to Signal Oil and Gas throughout this six state marketing area that you have mentioned? A. Oh, yes, it just applied in total.

Q. In total. It didn't apply to Oregon? A. I must make a minor exception. It excluded Phoenix because they had a supplier for a different market. I think that was gasoline I think out of Texas.

Q. But, it did apply to the entire six states marketing area? A. That is correct.

Q. Except for Phoenix? [5497] A. I was only dealing with those.

[5500] Q. Now, you have before you Exhibit 1550C-1 and C-2? A. Yes, I do. These tabulations.

Q. Now, that is in evidence a schedule showing Standard prices to Signal and first net proceeds to Standard starting with the period August, 1956 down through December of '57; now, you say the first line refers to August of '56 to December, '56? A. That's correct.

Q. Now, do you recall—then you will see there is a footnote "1"? A. Yes, I see that.

Q. Now, in that period of time, you calculated this check—I will withdraw that. For this period of time of August through December, what fraction of a cent a gallon had you calculated into this check which was handed O. W. March in January of '57? A. Oh, I think that worked out to almost exactly sixty-five hundredths of a cent.

Q. And would there— A. I don't have a tabulation on that, and that doesn't— [5501] this doesn't show that. No, that is a reasonably close figure.

Q. Now, will you turn to 1550B-1 which is dated, the memorandum dated February 21, 1957? A. That was the one we just renumbered.

Q. That is right. Now, you had a conversation with March of Signal Oil and Gas on or about that date? A. Well, this says in the first paragraph that I had one with him the day before, so it would be the evening of February 20, 1957.

Q. And what did you say to him at that time so far as Standard's position with respect to his adjustments was concerned, particularly as it may have affected you? A. I had told him that the adjustment was purely a temporary arrangement, that there was no restriction or commitments of any kind in connection with it. The mere fact that we had given it to them for that period, that we were not obligated in any way to carry on with a similar adjustment in the future.

Q. And— A. And as this memorandum goes on to say, apparently, I was a little wrong in that. That was my

understanding, but in the meantime, Mr. McClanahan, President of the Western Operations, and Mr. Mosher had had a discussion. I don't know whether it was by telephone or otherwise, and Mr. [5502] Mosher confirmed that there was certainly no commitment on Standard's part to continue this special adjustment but that it would be continued until such day as we told them that we would discontinue it and that was the difference. I had told Mr. March that this was it. I knew nothing further, but in the meantime my superior had told the head of Signal Oil and Gas Company that we may not necessarily continue it, but it would go up to the point of the day we told them that we would do it.

Q. And didn't Standard continue the adjustment during the period 1957? A. Yes, it continued until the end of our arrangement with them, so far as I know.

Q. And were these adjustments made each month or by the week or how was that done? A. No, the formula that I had suggested was the one that carried on. It was a quarterly figure.

Q. And did you hand the checks to Signal Oil and Gas during this period; were they mailed out? A. I handed this first one to them; whether the subsequent ones were mailed or handed to them, I just don't know. I just don't remember. Q. And these adjustments during 1957, again, was that on account of the six state marketing area? A. Oh, yes, I was dealing only with totals, the total [5503] volume less whatever small gallonage, if there was any over in Phoenix, and based on the experience of Signal's dealers in these six states.

Q. Did Standard ever extend a higher adjustment than three-quarters of a cent to Signal Oil and Gas? [5504] A. No, we did not. We were absolutely adamant on that. If we had, we probably would still have the relationship with Signal Oil and Gas.



Q. In other words, it is your testimony that even though the formula would come out to something, or with a result of something in excess of a cent, you still held it? A. That is my testimony that at no time did we allow more than three-quarters of a cent in excess of the base rates of four and a half, five and a half.

Mr. Hall: Could you advise as to the time that you made that statement to them?

The Witness: I think it would have to be, I mean naturally not to the day—I can't tell you that, but early in 1957 I undoubtedly told them that we were working on a formula. I am sure of that. That is the only way I [5505] could have preserved even a relationship during the time. I was in no position to give them a figure until I had authority from my own people.

. . . . .

[5506] Q. Now, did you continue your negotiations with representatives of Signal Oil and Gas through 1957 in an attempt to reach a final agreement with that company? A. Yes. I think possibly you can't—there wasn't too much negotiating. They did have this contract in their hands, this draft. It was an incompleated draft because it had blanks in it as to the discount they would receive on gasoline. I think beyond that it was a contract that would have been acceptable probably in the end with probably some minor adjustments; and I was just constantly inquiring if we could get together and read it and decide and give us a decision. You see, my charts, as I explained way back at the start of my testimony, was that this Mr. March and I were trying to iron out the things that we as individuals could agree on without of course committing our principles [5507] finally and until it had been approved by the respective Boards of Directors, but what would be a workable arrangement in our judgment. One point that we were unable to agree on was this price of gasoline.

[5521] Q. (By Mr. MacLaury) Then in October, 1957, Mr. Godfrey, did you receive some definite evidence that

Signal Oil Company was purchasing part of its gasoline supplies from competitors? A. Yes, I did.

Q. Directing your attention to Exhibit 1707 for identification, just state very briefly what the circumstances were of your having received that definite notice? A. This is the time that I was reporting to Mr. Vesper, that I had received an envelope addressed to Signal Oil Company in an envelope bearing the return address of the Union Oil Company at Richmond, California, and that it had in it five loading tickets covering deliveries of gasoline to Western Hyway Oil Company at Richmond.

And I might at this time explain how I—

Q. (Interposing) If you would, please.

Mr. Hall: Is this document in evidence yet?

Mr. Mac Laury: 1707, no.

Q. (By Mr. MacLaury) If you would explain the circumstances, please. A. It was not at all unusual, in fact it was a regular thing, for both the Signal Oil and Gas Company and the Signal Oil Company to get each other's mail. After all, there was a similarity in names. One was Signal Oil Company, the other Signal Oil and Gas Company. We had our [5522] offices in the same building. We found that it was absolutely impossible to separate mail; in fact, the post office would not separate—

Q. (Interposing) Would you bring the microphone a little closer, please. A. The post office could not separate it and so as a result, Signal Oil and Gas Company and Signal Oil Company maintained a common mail room in the building at 811 West 7th Street, where the mail for both was received.

Of course, the great part of it was identifiable because people properly addressed it to their post office box and ours to our post office box and it could be separated. But, of course, it is human nature to rather shortcut on writing an address on an envelope, and many times people would just write "Signal Oil Company," and when, if they had

written it in full, Signal Oil and Gas Company, it would have gone to them or Signal Oil Company, it came to us.

I don't recall which one of our individuals got this, but they, of course, knew I would be interested in the deliveries by a competitor to an account that we had been supplying gasoline for, so they brought this envelope with the five loading tickets to me.

This memorandum that we have here is merely reporting this situation in San Francisco, and I am sure right after [5523] that I probably took these invoices down to Bud March on the 2nd floor and kidded him about it.

Q. Did you report the situation in a memorandum marked 1707, to your superior? A. That is to Mr. Vesper, that is the memorandum we have here now.

Mr. Mac Laury: I offer 1707 in evidence.

Mr. Hall: Your Honor, we have a continuing objection on the grounds of failure to pinpoint as to these documents. We are not making any technical objections, and if we may have that continuing objection, we won't say anything further as these come in.

The Court: May I take a look at these, please.

[5524] The Court: Now, the witness has been here and he has testified subject to cross examination this that is contained in the memorandum. That is for the jury to determine what they wish to do about it. This is being offered not as proof of those facts but to substantiate or corroborate this testimony that he conveyed it to his people.

Mr. Mac Laury: Correct, your Honor.

The Court: It will be received on that basis.

(Whereupon, Defendant's Exhibit 1707, being a memo from D. F. Godfrey to H. G. Vesper, dated October 2, 1957, having been duly offered, was received in evidence.)

Mr. Mac Laury: If I may read 1707, Los Angeles, California.

The Court: By "his people" you mean the other officials of Standard Oil?

Mr. Mac Laury: Yes.

"Los Angeles, California, October 2, 1957.

Subject: Motor Gasoline deliveries to Western Hyway Oil Company (SO&G Co.) by Union at Richmond.

Mr. H. G. Vesper

San Francisco—

For your information.

[5525] "This afternoon I received an envelope postmarked Richmond, October 1, addressd to Signal Oil Company and bearing the return address—Union Oil Company of California, 1300 Central Drive, Richmond, California. The envelope contained five loading tickets covering loads at Richmond to Western Hyway Oil Company of Regular and and Ethyl Gasoline ranging from 8,350 to 8,640 gallons per load.

When one considers the special allowance we make to SO&G Co., this seems to support that Union prices are at least 5.25¢-6.25¢ off posted tank truck, and I have good reason to believe the Union prices are on the order of 5.50¢-6.50¢ off."

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[5529] Q. (By Mr. MacLaury) Now, did Standard Oil Company on a level somewhat higher than yours get in touch with Signal Oil and Gas concerning these purchases from Union? A. Yes, very definitely they did. I cannot tell you the exact date.

Q. Do you have Exhibit 1710 in front of you; does that refresh your recollection? A. I can tell you I knew there was such a letter, and here it is. Mr. McClanahan wrote to Mr. Mosher expressing his surprise and amazement and otherwise that they were buying from Union in the light of their relationship with us.

Q. And is that the import of Exhibit 1710? A. Yes. That is the letter dated October 24, 1957.

• • • • •  
[5534] Q. (By Mr. MacLaury) Now, finally, was a decision made among the Standard Oil Company officials with

which you are familiar concerning their final decision of the Signal Oil and Gas business? A. Yes, by this time late 1957, the Standard Oil people were reconciled to the fact that we had been unable to agree. We were adamant. We would not extend a greater price adjustment, and they were just as adamant that they could and would and are now buying, at this date buying from others at a lower price; so, we had pretty tentatively concluded along here in November or thereabouts that we would be the ones to terminate the arrangement. The liftings from us had dwindled down. They had the rights under the crude contract to start holding back on the deliveries of crude to us, and it has just reached the point where it wasn't worth while pursuing it much longer. I am sure if I [5535] could get an agreement in the next month or so or before the end of the year, why, it would have gone on. I was about the only one that was still trying hard to get the companies together.

Q. Was a notice finally sent by Standard to Signal Oil and Gas? A. Yes. We had made that decision late in December.

Q. And when was the notice sent, if you recall? A. No, I have it. I don't have any proper papers that are in evidence here except I did ask our people to tell me the date of this notice, and I have it here. Standard served the six months notice in January of 1958 terminating gasoline sales to Signal Oil and Gas as of July 31, 1958.

[5553] Cross-Examination

By Mr. Hall:

[5556] Q. (By Mr. Hall) Within your general experience, I am not tying you down, sir, to this particular station of Williams, were you familiar with temporary retail price assistance reaching as high as 7.5 cents per gallon? A. No, I am not familiar with that.



Q. These things didn't come across your desk? A. Oh, no, not individually.

Q. But you did work up a formula, I understand it, for Signal Oil and Gas which related over to your price assistance? A. Yes. That is what leads me to believe this is very excessive because I have testified in that formula that price assistance was down on the order around a penny and a half or whatever it was in these various times.

• • • • •  
[5575] Q. All right. Turning now to I think it is your 1515-B or Defendant's Exhibit 1515-B, there is a reference in there on the second paragraph to a check of \$394,735 paid to Signal Oil and Gas Company. A. Yes, sir.

Q. Now, to get this clarified, what period of time was that check for? A. That check was computed on the basis of Signal Oil and Gas Company's purchases from Standard from March the 1st, 1956 through the end of the year.

Q. I see. This was an amount in addition to your basic contract discount; is that not correct? Or to Signal Oil and Gas's basic contract discount? A. Yes, to the four and a half, five and a half. That is correct.

• • • • •  
[5578] Q. Right. What I was getting at is that the total special adjustments in dollars was around a million dollars; is that correct? A. It would have been around that order.

Mr. Mac Laury: You are talking about, counsel, the entire six state area, I believe. You haven't specified any area.

Mr. Hall: No, I don't believe the witness had either.

The Witness: No, that's correct. I just said I had [5579] to paint this thing with a broad brush. I'm dealing with totals.

Q. (By Mr. Hall) Now, I notice here there is a reference in the second paragraph of Exhibit 1706 that "Carl was talking pretty free and easy; and I am not at all convinced that the report is totally accurate." Now, you had indicated that you felt that these Signal Oil and Gas people

were quite reliable over the years, and I assume this is just bargaining that you are talking about?

Mr. Mac Laury: Well, is that a question, counsel?

Mr. Hall: Yes, there is a question mark.

Mr. Mac Laury: Well, I object to the form of the question, Your Honor.

The Court: Yes. You may ask him whether or not he made that statement.

Q. (By Mr. Hall) Well, may I ask for your—whether your own feelings are involved in that particular statement? Is that your expression too? A. No. I think Carl and I were just there lunching, and you see there that Perry Johnson did pin him down because he goes on to find—to establish that—he gets this answer from Carl Zamloch: “It wasn’t just a day to day deal. It would be a continuing deal.”

[5580] Q. (By Mr. Hall) Were these constant requests on the part of Signal Oil and Gas Company a general part of bargaining with them over the years? A. Oh, yes, very definitely. I think I covered that quite thoroughly. All the time from 1952 on in the negotiations or the attempted negotiations of the new contract, which never came to pass, and then again back in the middle forties when we were trying to renew at that time and were unable to do so.

Q. In that letter, there is reference to Mr. Zamloch talking again. He said that, “This company would take all of Signal Oil and Gas Company’s California production of crude oil and would take some Middle East crude too.” Was it a problem with Signal Oil and Gas Company to market their crude at this time? [5581] A. No. They had no problem on the domestic, because, of course, we were buying it. They had—and I don’t know exactly what year—but Signal Oil and Gas had gone into foreign fields here in the Middle East. They had some crude, and Standard wasn’t buying any of that. I don’t even know whether it was available at this particular time. But apparently—

Q. Is it fair—pardon me. A. The inference in this sentence is that at least Carl says that this other company would be interested in it.

Q. Is it a fair statement that Standard Oil Company of California was itself quite self sufficient in crude at this time? A. No, I wouldn't say we were self sufficient. We have always had to purchase crude. We cannot exist on our own production. I would say though by this time, late September, that it wouldn't have been the calamity that it would have been earlier if we had lost it.

• • • • •  
[5593] Q. And your testimony, as I recall, is that the decision [5594] to terminate, is this correct, was around three months before the end of the year? That is, the termination on the Signal Oil and Gas Company's contract. A. I think my testimony possibly was generally in that way. I think it might be accurate to say that I think we were reconciled to the fact, but if you are talking about final decision of the Board of Directors, that would be the final, and that wasn't until much later in the year. I think I testified this morning that I worked up to the very end. And if I had been able to agree with these people on the price of gasoline, why, we certainly would have continued.

[5595] Q. (By Mr. Hall) I see. Is it true that you also testified that the top management had apparently decided to terminate their contract three months before, several months before the close of 1957? A. I think they had reached the thinking that that was the inevitable conclusion if we got nowhere.

Q. Well, I would ask you this then, referring to page 60 of your deposition, the sixth line. The question was,

"When did the company make its decision to terminate this, the Signal Oil and Gas Company contract?"

And your answer,

"It would have been along in the last several months of '57. I am sure that if we had of been able—if I had

been able to agree with those people that that would have changed the complexion; but I am pretty sure our people gave it up as hopeless. After all, I'd been trying now since 1952."

Is that a correct statement? A. I think that is about what I have said now, too, if I could have pulled it out of the hat, why—

Q. It is mentioned in the last paragraph of that Exhibit 1711 the Regal stations, they are the marketing outlet, are they not, for the Signal Oil and Gas Company? A. They are a marketing outlet for Signal Oil and Gas Company.

[5596] Q. All right. A. They are now. You are now asking me for just pretty general knowledge that I as a marketer have and I am not an expert witness on this, but I do happen to know that Regal stations are owned by different people and are supplied by different companies.

Q. But is it not correct that the Signal Oil and Gas Company regards them as their marketing outlet? A. They regard the Regal stations that they are contracted with as a marketing outlet. There are other Regals supplied by others or were during this period. I am completely unfamiliar the last year or so.

Q. Do you have any personal knowledge of the situation up here in the Northwest as regards to the Regal stations, whether they were owned by them or not? A. I have no personal knowledge as to whether they were owned. I am reasonably sure they were supplied.

• • • • •

[5602] Q. Now, wouldn't it be a fact, Mr. Godfrey, that during this entire claim period that the Union Oil Company of California did not sell one drop of gasoline up here in the Pacific Northwest—

Mr. MacLaury: To—

Q. —to Signal Oil and Gas Company? A. I don't know, there is nothing in this evidence that they, or the things that I have looked at to indicate they did in the Northwest.

Q. There is nothing in this evidence that you referred to?  
 A. No, these were deliveries at other places.

[5603] Redirect Examination

By Mr. MacLaury:

[5605] Q. What percentage would that be of the total delivered to Signal Oil and Gas? A. Oh, the amount up here?

Q. Yes. A. I guess about three per cent.

Q. Now, you testified as to certain checks representing these allowances were paid over to Signal Oil and Gas at the end of each quarter in 1957.

Do you recall that testimony? A. That is correct.

Q. And you also testified there was one check that was handed to Signal Oil and Gas in January of '57. Do you [5606] recall that? A. 394,000 and something.

[5607] Q. (By Mr. MacLaury) (Continuing) Now, were these checks constituting these balances calculated on the basis of total gallonage delivered to Signal Oil and Gas in the six western states? A. Yes, plus the possibility of a very minor quantity in Arizona. No, the way to answer your question is, yes, in the six western states it would be the total of their requirements less Arizona. So, I get back there to the six states. No, Arizona would be in the six states. The latest answer is correct. Exclude gasoline supplied from Texas to Phoenix.

[5682] Mr. Tilbury: I would like to read a portion of Mr. Gray's deposition, Your Honor.

(Whereupon counsel Bruce Hall took the stand to answer questions from the deposition of Andrew Douglas Gray.)

[5683] "Q. Would you state your full name for the record, Mr. Gray? A. A. D. Gray.



Q. What do the "A" and "D" stand for, Mr. Gray?  
A. Andrew Douglas Gray.

Q. And your position, sir? A. Manager, refinery bulk sales.

Q. Of what company? A. Union Oil Company of California.

Q. How long have you been employed by the Union Oil Company? A. Thirty-four plus years.

Q. What occupations have you followed for Union Oil Company during that time? A. Original assignment was a truck driver, 1929. Salesman, agent, district sales manager, and division manager, assistant division manager, special representative, and manager, refinery sales.

Q. Is that your present position? A. Right.

Q. Was that your position—was that the position you held in the years from '55 through '58? [5684] A. No.

Q. What position did you hold at that time? A. Special representative.

Q. Under which department? A. Under the refinery sales department.

Q. By October of 1957 were you manager at that time of the refiner and jobber sales? A. No.

Q. Let me just show you a letter or memorandum dated October 30th, 1957. A. Well, I don't remember the exact date of the title chain. The work has been much the same.

Q. By that date, according to the letter, you had become manager of the refiner and jobber sales. A. Right.

Q. What was your particular line of responsibility as manager of the refiner and jobber sales? A. The sale of unbranded products, petroleum products.

Q. Would this be throughout the operating area of the company? A. Yes.

Q. This would be overall supervision? A. Right.

Q. Did you have occasion to deal with the Signal Oil and Gas Company from time to time? [5685] A. Yes."

• • • • •  
"Q. Would you have been familiar with any negotiations that might have been conducted by your company with the Signal Oil and Gas Company? A. Entirely so.

Q. This would be one of the responsibilities that you had?  
A. Yes, sir."

[5691] "Q. What is the next date you have? October 14th? A. '57, yes, sir.

Q. What sort of document is that, in a general way?  
A. This letter was prompted by our desire to be competitive with Standard Oil Company competition, and it was pursuant to the pricing on the increment of gasoline which we had reference to in our letter to Signal Oil and Gas on September 25th.

Q. And was this something you prepared, Mr. Gray?  
A. Yes.

[5692] Q. Was it prepared in the normal course of your activities as head of the— A. Yes.

Q. —Refiner & Jobber Sales? A. Correct.

Q. In the letter you have made a comparison between the prices charged the Signal Oil and Gas supplier, at that time with the price that your company was contemplating offering or was offering, as the case may be. A. Yes. These prices that I have set forth here and the statements which I have made in the letter were prompted by my conversation with representatives of Signal Oil and Gas who gave me this information verbally.

Q. I see. A. I saw no documents.

Q. I take it that when you prepared the memorandum, you were convinced that, in fact, your prices to the Signal Oil and Gas Company were actually somewhat higher than the prices then being charged by the Standard Oil Company? A. This is what I say here.

Q. All right. A. Lower and higher, both.

Q. Did you make any investigation on your own to determine these facts? A. There was no other source of information that I had.

[5693] Q. Did you see invoices or any billings of that kind? A. No.

Q. It was based upon information that was given you by Signal Oil and Gas employees, right? A. Right.

Q. The locations involved are those that appear on the letter, is that true—Rosecrans, Richmond, Los Angeles and San Francisco? A. Right.

Q. Again, it does not apply to the Pacific Northwest, I take it? A. That is right.

Q. In the letter I notice that you mentioned that there was a rebate in the Los Angeles area during the third quarter, in the amount of nine-tenths cents per gallon, apparently given by the supplier of Signal Oil and Gas Company, which I gather was Standard at that time. Is that, again, what was referred to? A. This is what they told me.

Q. All right. The last paragraph, Mr. Gray, would you mind reading that into the record? A. 'Under the circumstances, we feel quite confident that our offer was very realistic and Signal Oil and Gas are only purchasing locally from us because they are held to contractual supplies.' May we also add that in our best [5694] judgment the prices offered by us are the competitive level under which an account this size could purchase elsewhere.'

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[5701] "Q. In other words, Mr. Cadwell's instruction, if it is an instruction, was carried out? A. Well, these were not instructions. These were his comments.

Q. I see. All right. A. This was his request at the time.

Q. Mr. Gray, did you offer Westway's prices to the Signal Oil and Gas Company before this memorandum was written? In other words, did you make a firm offer, yourself, or did you merely discuss this as a possibility? A. I certainly did not make a firm offer without and would not make a firm offer without confirming the acceptance of the offer to management.

Q. This would be something in the nature of a price decision which would require the consent and approval of someone further up the line than your own particular position? A. It would, but generally, and in many instances in our business, we get, at first blush, a refusal, and that doesn't necessarily mean that the situation is dead by a long ways.

Q. I understand. With respect to Signal Oil and Gas and its relationship in the Pacific Northwest, did you obtain approval from anyone further up the line in management to [5702] make a firm offer to the Signal Oil and Gas Company at the Westway price level? A. Not at this time.

Q. Did you at some subsequent time, sir? A. I don't recall."

[5897]

Maxine B. Ross

was thereupon produced as a witness in behalf of plaintiff, in rebuttal, and, having been previously duly sworn, was examined and testified as follows:

[5923] Cross-Examination

By Mr. MacLaury:

Q. Now do you have those gallonage figures before you, Mrs. Ross? A. Which gallonage figures—

Q. The gallonage figures on sale of gasoline to the [5924] Signal Oil and Gas. Now, I think you gave us a figure for total sales in Oregon and Washington. I notice here something that Mr. Tilbury has handed me, which I think he said that you prepared. It shows a figure here for Oregon of some three million, three hundred eleven thousand gallons during the year 1957. Do you have that figure in front of you? A. Yes.

Q. Now, my arithmetic, which has been checked by my associate here, Mr. Kirklín, indicates that that is 3.8% of total sales by Standard to Signal Oil and Gas in this Western area. Would that match up with your arithmetic? A. That would be the percentage that they sold in the State of Oregon alone.

Q. Yes, that is what I mean. A. That could be approximately. I didn't work that figure out.

Q. I know you didn't. And I did, and I just wanted you to check me, and I thought— A. That's the Oregon gallonage.

**B. Excerpts From Plaintiff's Closing Argument**

[6083] Now, of course, the Standard Oil Company in this case, in its desire to market its products—we don't blame them for wanting to sell all of their products, I suppose this is the objective of all of us, to try to sell as much as you can in as many different areas as possible. They have gone into this thing in almost a six level basis. They have attempted to keep certain facts—I don't know any polite way to state it other than that—keep certain facts away [6084] from the public. They do not identify, for example, and specifically enjoin Mr. Perkins to make no mention of the fact that he was selling Standard products. They mention that there was a certain market, apparently, that was getting away from them in areas such as Mr. Perkins operated. As you know, he was no—was no Johnny-come-lately to the petroleum business. He had been in this business since 1928 and at the time he made his arrangement with the Standard Oil Company in 1945, he had built up these stations in somewhat the same areas. As a matter of fact, there are very few real additions as far as his own service station constructions during the period of the Standard contract. He had an existing market. This was a market that he had established. He was selling a different brand, to be sure, and as you recall, perhaps from—although it goes back several weeks and months now, I realize, he indicated that the reason he got into this arrangement in the first place was because they were thinking about building their own terminal in North Portland.

As a matter of fact, he had even gone to the City and made arrangements to obtain this terminal so that he could then obtain his own supplies from the outside and so then he would become a source of competition to the Standard Oil Company, and they didn't want that. They wanted to be sure that this market was tied down as well, so the arrangement [6085] was made. And this is the arrangement that he was confronted with.

• • • • •



[6087] I wonder if we have 1550 here, the large chart? Mr. Roberts, is that up yet? If not—oh, it is over there. Yes, if you would move it over, please.

[6088] Now, of course, defendant has, in making this computation, carried it out to say .0038, .0068, .00437. I hope nobody will be confused by this. Frankly, I was in the beginning and still am occasionally, because there is sort of a jump backward from the pennies and dollar signs and the mills and the like so that sometimes you find you are [6089] talking about tenths of a cent instead of ten cents and the like.

[6090] Mr. Tillbury: (Continuing) I hope nobody will be confused by these figures, because they don't have it labeled on the dollar basis.

The evidence, as indicated, there is no contradiction of this, that, when this figure appears, .0038, .0068—and so forth—I think we can all understand that this point, perhaps in the beginning it was a little hard to appreciate this factor; the fact is that when we talk about a tenth of a cent in this business, it is important, it is really important because of the quantities that were being purchased because when we project that over the sales that were being made by Clyde Perkins—as I recall Mr. McDaniel's chart indicates purchases of around 19 million gallons, multiplying one-hundredths of a cent in terms of those quantities can be very substantial, and throughout this period the losses, discrimination, with one exception, which I will briefly touch upon, was .38 of a cent. I take it back, .3635, and the highest was .38 cents.

[6094] Now, the the only question is to the magnitude of the discrimination, and if you take our approach, you would add an additional .33, a little more than this, cents onto the figures because Standard in making these computations, in the figures I have mentioned, you will see at the head

of their column for Signal Oil and Gas they have Portland, they say Willbridge. I take that back, it was for Portland deliveries; at the top of the column they say not Portland, although there were in fact some deliveries in the City of Portland, as you know; for which there were no freight adjustments of any kind.

They put at the top of their column Vancouver destination. In other words, they have picked out the one area. Now, I don't want to mislead anyone. We don't question the fact that Vancouver was a very substantial area to us. That this represented our largest marketing area, there isn't any question about that, and we don't question the fact that this station on North Burgard Street was not our biggest station, it wasn't. It wasn't the largest operation we had, by any means. Nevertheless, the reason we feel this is a proper place to start as against Vancouver is that here we can compare apples. We have the same sort of animal. We have the same basic commodity, we have the same point of delivery, we have the same conditions on the same day because, for example, we see no reason to think [6095] that if we were receiving this freight adjustment over in Vancouver that if Signal Oil and Gas Company decided to build over there, too, they would not receive a similar type of adjustment.

But, nevertheless, we have attempted, and of course here is where we differ from them, we would add to these discriminations which they have admitted, very few minor exceptions, the .33 factor which will raise the amount of discrimination by quite a considerable margin. In other words, one-third of a cent. Now; we haven't stopped at that point, however. We acknowledge the fact that the amount of gallonage going out to these different locations was different and we acknowledge the fact that there were differences in freight rates and we certainly acknowledge the fact that we received certain freight adjustments for those various destinations. In some areas, as it is now conceded by both parties, it was to Standard's advantage

to ship—actually, Standard didn't do it, you know, they assigned on the loading ticket at Willbridge its destination and common carrier took it there. It did vary where the destination was.

[6153] Now, I would like to say this: These figures that Mr. [6154] McDaniel used were, I believe the evidence would indicate, and I think if this schedule reflects it, conservative. Now, that sounds like a lot of money. It is a lot of money, sure. There is no question about it. But the figures he used are very conservative. And I think I can say that in all good conscience and very clear conscience in this case, because there are a lot of factors here that he did not add in in making his computations that do represent losses in a very real sense. For example, the most obvious one I am sure you are aware of is the fact of subsidy and the fact that he did not receive the subsidy program. Now, there was testimony on the part of the president of the Signal Oil Company, Mr. Godfrey, that they gave throughout the entire claim period subsidies that exceeded one penny to all of their dealers wherever considered. Now, if you consider the nineteen million plus gallons that were sold to Mr. Perkins, if he had received the same subsidy, he would have received an additional \$190,000 from that point on. If you consider the fact that the Chevron dealers had another rather decided advantage, and that is that they didn't have to worry about the product shrinking. For example, it was delivered to the doorstep by a Standard Oil truck, as the evidence indicated. They didn't have to go out and rustle up transportation and go down and pick it up. They were delivered to the door. Therefore, when they [6155] got it on a net figure. Our product had to be stored, and in many cases for many months.

[6204] Mr. Hilliard: (Interposing) Excuse me, Counsel, for the interruption. We would object to any reference to

Dr. Mund's testimony because we were not permitted on cross-examination to apply any conclusion he had to the facts of this case.

In other words, they asked him to apply his own opinion to the facts of this case. His testimony was just in the abstract and never connected to this factual situation.

The Court: You may continue but I will ask you not to represent to the jury that you are reading his record.

Mr. Tilbury: All right, sir.

The Court: I want you to represent to the jury that this is your understanding of his testimony or this is your recollection.

Mr. Tilbury: Yes, sir, I will do so. Thank you. I thought I made that clear. If I haven't, I will do so. These are notes that have been made and if this is not in accordance with your recollection, then please disregard whatever these notes may indicate. As far as I know, they are accurate. It is possible there may have been an inadvertent error.

Dr. Mund said this, and I won't go all over it—I think there are two or three things here that are quite pertinent.

This is Transcript 2506, Mr. Hilliard, and 2508.

[6205] The term "price discrimination" went from popular use into economics, business, and the law. And Webster's Unabridged Dictionary describes the word generally as making a distinction, making an unfair or injurious distinction. This is discrimination. In relation to price, it would mean making a difference in price, charging some people a higher price, others a lower price, for the same class of goods under substantially the same conditions. In the first place, experience shows as business practice it may be practice between persons. A situation which a supplier charges some people a higher price and some people a lower price. In price discrimination there are always two prices, a higher price and a lower price, for the same class of goods under substantially the same conditions and discrimination is contrasted with competition in an open



market where all customers buy at the same price. It is the reverse or the negative of competition. Discrimination and competition are mutually opposite.

Now again later he said, page 2515, according to my notes—I again hasten to add these are simply our notes. The testimony of leaders in the field of economics going back to Professor Tousigg at Harvard, Professor Jacob Viner, Chicago, now at Princeton, Professor Fedder at Princeton, the Canadian Combines Commission in Canada, and my own writings, as well as those of others, have developed [6206] the generalization that price conditions, that price discrimination as a business practice can arise and exist only under conditions of some degree of monopoly power. In other words, the conclusion is that price discrimination and monopoly are Siamese twins. You do not find price discrimination without some degree of monopoly. Again he defined price leadership, and I won't take your time to go through that, because I think you probably recall the testimony. Finally he said at page 2518, so to answer your question, when competing customers have higher—in the case of competing customers, one has higher costs because of price discrimination, this chain of events inevitably arises and develops and it was for this reason that Congress took steps to pass laws against discrimination because under these conditions small business can't survive. Small business cannot survive in a regime of discrimination; it goes out for the reasons I mentioned, and if we are going to preserve small business, we have to have laws to prevent this sort of thing otherwise small businesses would go out regardless of its efficiency.

Now, I don't know what I can add to the observations of Dr. Mund. I am sure anything that I would say would be trite under these conditions, and I suppose it is a matter of common sense.

[6400] Mr. Hilliard: Yes. We will. I think Mr. MacLaury has one matter to call to Your Honor's attention.



Mr. Mac Laury: In view of Your Honor's changing the gross profits and net profits, we thought that the McDaniel exhibits should be withdrawn from the jury.

Mr. Hilliard: Those are on gross.

Mr. Mac Laury: Those are on gross profits.

The Court: Don't they have to recognize them? I told [6401] them they would have to charge them.

Mr. Mac Laury: The problem is there is no evidence in the record as to what expenses they could deduct from the gross profits.

### C. Defendant's Objections to Instructions

[6420]

#### Defendant's Exceptions

Mr. Mac Laury: The defendants, Your Honor, would except to the submission of a form of special verdict to the jury providing for the assessment of damages on the second cause of action in behalf of Perkins Oil Company of Oregon on the following grounds: One. The Statute of Limitations had run against the claim when first asserted in this action. Two. By his response to admission of fact number 6 and responses to interrogatory of defendant, plaintiff has barred himself from and has waived this claim. Three. The complaint may not be amended under Rule 15-C or any other provision of law—

The Court: May I interrupt just so I can follow you. This is the first time this has been urged, is it not?

Mr. Mac Laury: No. This is in line with our very basic position taken with the Court at pretrial conference.

The Court: I understand. I understand.

Mr. Mac Laury: Just—

The Court: Yes, I understand.

Mr. Mac Laury: Just the assertion of the separate claim.

The Court: I thought it was something that came up different—

Mr. Mac Laury: No.

The Court: I understand.

[6421] Mr. Mac Laury The complaint may not be amended under rule 15(c) or any other provision of law so as to

relate back the claim of the Oregon corporation to the time of the commencement of this action. Four. The claim was not asserted in the complaint. And five, the Oregon corporation is not a purchaser from Standard either directly or indirectly within the meaning of the Robinson-Patman Act or the authorities construing that Act, such as the Chemstrand, C-h-e-m-s-t-r-a-n-d, or American News cases.

The defendant would also—does also except to the submission of the form of special verdict to the jury providing for the assessment of damages on the third cause of action of Perkins Oil Company of Washington for all the reasons and on all of the grounds stated in support of defendant's objection to the submission with respect to second cause of action in behalf of Perkins Oil Company of Oregon. Your Honor, that is with respect to the third cause of action. Is the Court sufficiently apprised of our grounds?

The Court: Yes, I follow you.

Mr. Mac Laury: The defendant excepts on the same grounds and for the same reason to the submission to the jury of the form of general verdict insofar as the general verdict is intended to include the aforementioned second [6422] and third causes of action or claims on behalf of the Perkins corporations.

[6423] Mr. Mac Laury: Defendant excepts also to the Court's instructions given to the jury on the grounds that said instructions failed to include defendant's written requested instructions heretofore filed with the Court and numbered as follows:

1, 2, 2A, 3, 4, 5, 8A, 10, 12 Revised, 12A, 14 Revised, 14A, 23, 24, 25, 26, 27, 28, 29, 29A, 30, 31, 32, 33 Revised, 34, 35, 36 Revised, 37 Revised, 37A, 38 Revised, 40, 41, 42 Revised, 43, 44 Revised, 44A, 44B, 45 Revised, 45A, 46, 47, 48 Revised, 48A, 49, 50 Revised, 50A, 51 Revised, 54A and 54A-1, 55 Revised, 56 Revised, 57, 58, 61 Revised, 62 Revised, 63, 64, 65, 68, 69, 70 Revised, 72 Revised, 73, 73A, 74, 75 Revised, 76, 77, 78, 79, 80, 81, 82 Revised, 84 Revised,

85A, 86, 90, 90A, 92A, 92B, 93, 93A, 93B, 96, 97A and 98A.

Defendant Standard would further except to the Court's instructions given to the jury on the grounds that said instructions failed to include in the form requested in writing and filed with this Court the following Instructions:—

The Court: You mean I can't make up my own?

Mr. Mac Laury: Oh, yes, Your Honor. Some of the defendant's instructions were given, but revised by the Court and I have five or six here. For example, Instructions 15, 16 and 17, the Court left out some of the elements.

[6424] The Court: I see what you mean. I see what you mean now. Not giving all of your instructions.

Mr. Mac Laury: And then some of them, those that I just mentioned, were those that the Court had denied entirely, and then these that I am about to list are instructions not given, modified.

The Court: I see.

Mr. Mac Laury: I thought I better state the grounds for those.

The Court: Well enough.

Mr. Mac Laury: Instruction No. 9, the Court denied the last sentence of this requested instruction. That should be Instruction No. 9 Revised. The Court denied the last sentence of this requested instruction and this denial permits the jury to find a timely oral assignment. It is the defendant's position, and has been since the commencement of the case in chief, that there is no evidence in the record of such an oral assignment nor evidence from which an inference of such may be reasonably drawn.

Instructions 15 Revised, 16 Revised and 17 Revised, the Court denied the first element of these instructions, to-wit, the language in each reading (1) "that he was a purchaser of gasoline from Defendant Standard and not a consignee who received gasoline on consignment." As we advised the Court during our argument on December 13th, the [6425] 1953 and the 1956 contracts are contracts of consign-

ment and not contracts of purchase and sale, in the defendant's view.

The evidence shows the contracts were performed in accordance with their terms. The authorities including *Students Book Co. v. Washington Law Book Co.*, DC Cir 1955, 232 F2d 49, and others including the statute itself, provide that discrimination to come within Section 2 of the Clayton Act must be between two purchasers. We think that on the state of the record that the Court should instruct as a matter of law that Clyde Perkins is not a purchaser within the meaning of the Act. Failing this, it is defendant's position, and we urge the Court should at least submit the question as an issue of fact to the jury. By failing to include in his instructions the omitted language which I have referred to, the Court has failed to submit this question of fact to the jury, and has ruled as a matter of law that under the facts of this case Clyde A. Perkins is necessarily a "purchaser" within the meaning of the Act.

Instructions 18 Revised, 19 Revised and 20 Revised. The Court also denied the first element of each of these instructions, to-wit, the language "that these corporations were purchasers of gasoline from Defendant Standard." It is the defendant's position that the indirect purchaser rule as set forth in the *Chemstrand & American News* cases [6426] does not apply to the Perkins corporations and the facts in this case.

It is further defendant's position that the evidence shows that Standard was not even aware of the arrangement between Clyde Perkins and the corporations and that there is no basis in the evidence for the Court's ruling that it is a matter of law that the corporations were purchasers within the meaning of the Robinson-Patman Act. In light of the Court's ruling that Clyde Perkins as a matter of law was a purchaser, we urge now, as we have urged before, that the corporations cannot also be purchasers from Standard of the same products and that the Court should rule as a matter of law that the corporations are not pur-



chasers from Standard within the meaning of the Act and on the basis of the present record in this case.

Failing to do so, the Court should submit the matter, it is our position, to the jury as a question of fact. By omitting from its instructions the first element in defendant's Requested Instructions 18 Revised, 19 Revised, and 20 Revised, the Court has denied our request to submit this fact question to the jury.

Defendant further excepts to the Court's modification of defendant's Requested Instruction, 18 Revised, 19 Revised and 20 Revised, by omitting therefrom the last clause reading, "(6) That these corporations executed written assignments of their [6427] claims against Standard prior to the bringing of this lawsuit on March 2, 1959." We urge this exception on the following grounds: First, there is no evidence in the record of an oral assignment and no evidence from which a reasonable inference of an oral assignment of the corporations to Clyde A. Perkins can be drawn.

Further, there is no evidence of either a formal or informal meeting of directors or stockholders of the corporations at which such an oral assignment was made or discussed, and there is no evidence in the record that Clyde A. Perkins ever expressed an acceptance of a oral assignment.

The defendant further excepts to the modification of defendant's instructions, 16, 17, 19, and 20 Revised—they are all revised—16 Revised through 20 Revised, on the grounds that Standard, and in this instance, the Court, I have reference to the deletion of the first clause of the second clause, which reads: That Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, were engaged in the business of retailing gasoline to the consuming public. And with respect to 17 revised, 18 and 16 revised the deletion of the language that plaintiff was engaged in the retail sale of gasoline for the consuming public. The grounds of these exceptions are that it is defendant's position that Standard may reasonably sepa-



rate its [6428] customers into accepted trade classifications, such as jobbers, wholesalers, and retailers, and may treat each classification differently with respect to the furnishing of services or facilities or payments by Standard for services and facilities furnished by its customers. By omitting the second clause from these instructions, 16, 17, 19, and 20, all revised, the Court has taken the fact question from the jury whether plaintiff or Perkins Oil Company of Washington, or Perkins Oil Company of Oregon are properly considered to be in the same functional class as Standard's branded dealers, Chevron and Signal, and we request that this question be submitted to the jury.

With respect to Defendant's Instruction 21, we except to the modification by the Court of this instruction, where the Court added the language, "And which did not result from conditions created by Standard" it is our position that regardless of conditions in the market created by Standard plaintiff cannot recover in this action because of inability to compete with customers of competitors of Standard. Further we except to this added language on the ground that there is no evidence showing or which may support the inference that any price war situation or depressed market in Portland or elsewhere was proximately caused by any act of Standard whether it be price discrimination or otherwise. In this respect we point to the evidence that shows that [6429] Regal was not a purchaser from a customer or purchaser of Standard but was twice removed.

We except to Instruction 38 Revised, as amended by the Court, and in particular to the language added by the Court, "Or later allowed during the claim period." This refers or at least could be construed by the jury to refer to an allowance extended to Signal Oil and Gas Company by Standard in January, 1957. This adjustment cannot have had any effect on competition in Portland or the vicinity during the period August, 1956, through December, 1956. The later adjustment in January, 1957, was not a part of

or a deduction from the price charged by Standard to Signal Oil and Gas during 1956. It therefore could not have been used during that period by Signal Oil and Gas with any competitive effect, nor with any injury resulting to plaintiff. It could not have been used by Signal Oil and Gas, Western Hyway, its customer, or the customer of the Western Hyway, Regal Stations Co., to affect the market in any way in 1956 or to compete with or injure plaintiff or the Perkins corporations.

With respect to Instruction 85 Revised, which was given by the Court in an amended form, we except to the elimination from this instruction of the last two sentences on the following grounds: Acts of Regal are the aspects of this case upon which plaintiff relies probably most strongly. [6430] We contend that the evidence shows that Regal did not affect the market outside Portland. In any event we strongly urge that we are entitled to an instruction withdrawing from the jury any question concerning damage to plaintiff or Perkins Oil Company of Oregon's business in Portland since the evidence shows conclusively that they did not sell gasoline at retail or wholesale in Portland which could have been affected in any way by Regal. By the time Regal entered the Portland market, plaintiff had ceased doing business in the retail or the wholesale level in Portland.

[6431] Mr. Mac Laury: With respect to Defendant's Instruction No. 92, defendants except to the elimination from the Instruction 92 of the last sentence on those grounds that the last delivery, the last date of delivery of any products including gasoline by Standard to Clyde Perkins was December 2, 1957, the evidence shows that Westway was supplying Perkins' stations on December 2 of 1957.

It is our position that there can be no recovery with respect to beyond the period in which a contractual relationship between buyer and seller would entitle the buyer to delivery of the products involved.

With respect to Instruction No. 97, we except to the addition of Clyde A. Perkins as one of the lessors of properties on the ground that Clyde A. Perkins was not a marketer of gasoline, and he was not within the target area of alleged discrimination, and he is not entitled to individual recovery of damage as a non-marketing, non-operating landlord.

The Instruction 97 to which I have just referred refers to the goodwill of going concern value of properties in its original form at least by Perkins Oil Company of Washington; and an exception is taken to the inclusion along with Perkins Oil Company of Washington, the plaintiff Clyde A. Perkins.

We except to the reading by the Court and the instruction [6432] by the Court to the jury as pertinent portions of the Act involved in this case, Sections 13D and E of the Robinson-Patman Act.

It has been defendant's position from the outset that these claims asserted by plaintiff and the two corporations are barred by the statute of limitations because they were not asserted until some time in July, July prior to the first trial of this case; and they are not mentioned nor alleged in the complaint; and we refer to the complaint upon which this action was tried, paragraph 7.

We would further now with respect to the Court's Instructions, we would except to the instructions given in the form of Defendant's Instruction No. 7 and in particular to the statement in the second sentence thereof reading: "After 1952, Perkins of Oregon, a corporation, and Perkins of Washington, a corporation, and Clyde Perkins, marketed these products," and the three marketed these products. I believe those were the words the Court used, and it has been our position throughout this proceeding, your Honor, that Clyde A. Perkins did not and was not an active marketer of any of the petroleum products delivered to him by Standard.

Again, with respect to the Court's Instruction concerning the meaning of the terms "Purchasers" and "Cus-

tomers" having an instruction by the Court to the jury that the Court has determined as a matter of law that Clyde Perkins [6433] individually and Perkins of Oregon and Perkins of Washington and each of them were purchasers within the meaning and use of that term as used in the Act, we would object and except to that instruction on the same grounds as heretofore stated with respect to the Court's modification of Defendant's Instructions: 15 revised, 16 revised, and 17 revised; and a denial by the Court of the first clause in those three instructions. The same grounds were also repeated in respect to defendant's objection to the modification by the Court of Defendant's Instructions 18 revised, 19 revised, and 20 revised and elimination therefrom of the first clause from those instructions.

The defendants would also except to the Court's Instructions and the language of the Court's Instruction connected with the Court's ruling that Clyde Perkins, Perkins of Oregon and Perkins of Washington are purchasers within the meaning of the Act, and specifically to the language of the Court: "That the dealers and outlets of Clyde Perkins individually were customers of those purchasers, respectively," which is an instruction to the effect that Clyde Perkins operated service stations and outlets through dealers and that he individually serviced dealers as customers.

Defendants also except to the same instruction, and in particular the implication of the language in that instruction [6434] which would indicate and appear to assert that certain dealers and possibly Regal Stations Co. was the customer or purchaser of Signal Oil and Gas. It is our position we think that the evidence shows, particularly the testimony of Ross Grover—Ross Grover—that Regal Stations Co. was the customer and purchaser of Western Hyway and not the Signal Oil and Gas Company.

We further object to the Court's Instruction immediately preceding Plaintiff's Instruction No. 37 which states that "Clyde Perkins individually and Perkins of Oregon and



Perkins of Washington were customers of Standard, were both customers of Standard" within the meaning of that term as used in the Act, this apparently being intended to bring Clyde Perkins and the two corporations within Section 2D of the Act and as proper claimants under 2D of the Act.

Defendant's except to Plaintiff's Requested Instructions as given by the Court in modified form, and particularly to the language asserting that plaintiff Clyde Perkins was a purchaser within the meaning of that term of the Robinson-Patman Act and that the language instructing the jury to disregard testimony in consideration of whether or not these contracts were a consignment or purchase and sale.

It has been our position from the outset of this proceeding that the contract between Clyde A. Perkins and Standard Oil Company of 1953 and 1956 were contracts of [6435] consignment.

The evidence in the case shows the provisions of those contracts were in fact carried out, and there was no difference between the performance by the parties under the contract and the terms of the contract; and that Clyde A. Perkins would not be the proper one to consider as a purchaser within the meaning of the act; that, if anything, we would urge the Court to, and have urged the Court to rule as a matter of law that Clyde A. Perkins is not a purchaser within the meaning of the Act, and that in any event at the very most it was a question of fact for the jury.

Your Honor, we the defendants also except to the Court's issuance of Plaintiff's Requested Instruction No. 22, which in substance pointed out or directed the jury that in computing or determining the final net price charged by Standard to competitor of Perkins, the jury must first deduct all discounts, allowances, payments, rebates, and taxes made and allowed within the claims period. The grounds for our exception are that the instructions allow a deduction from the price, of payments, allowances, dis-



counts, and rebates made subsequent to the date the price was in fact paid, which were not a part of the terms of sale at the time the sale was made.

We have specific reference to payment in January of 1957 of the sum to Signal Oil and Gas.

The Court: I understand. I have to face up to that rule. [6436] Mr. Mac Laury: And lack of impact on competition.

We also except to the language "A competitor of Clyde Perkins" on the ground that Clyde Perkins was not a marketer; and further, the net price should be the same whether applied to Perkins or Signal Oil and Gas Company, i.e., freight allowances should specifically be deducted from the price to Perkins as well as all other deductions.

The Court will note the instruction states simply that in computing or determining the net price charged by Standard Oil Company of California to a competitor of Perkins, such deductions should be made.

We think the deductions should also be applied.

The Court: You didn't—

Mr. Mac Laury: The deductions should also be made from the price charged from Standard to Perkins.

The Court: You didn't put that in your request, did you? I thought—

Mr. Mac Laury: We had no instructions on net price.

The Court: Your net price I think is identical with each other except the plaintiff asked for taxes which you didn't.

Mr. Mac Laury: I will find out in just a moment, your Honor.

The Court: I think you will find—

Mr. Bonyhadi: Your Honor, as I recall, our requested [6437] was on net price and was a paraphrase of one of the contentions of the defendant and out of the pretrial, a contention of the plaintiff.

Mr. Mac Laury: Well, no, your Honor, you see we don't name any particular party, our No. 38. No. 38.

Well, our 38, your Honor, was given.

The Court: I put in "taxes", didn't I?

Mr. Mac Laury: Yes, and you also inserted the language "or labor allowed during the claim period."

The Court: Yes, I understand I added that.

Mr. Mac Laury: Thereby subject to our first exception or the grounds for the—the first grounds for our exception.

The Court: I understand that. You certainly may have it.

Mr. Mac Laury: You requested that. That is a phrase.

Now, with respect as to the Court's further instruction on the subject of assignment or transfer of a cause of action, now, we do except to the language by either a written instrument or by "parol arrangement". That is by words or the conduct of the assignor or the party making the transfer and the assignee or the party accepting the transfer.

[6438] Mr. Mac Laury: (Continuing) Again, our basic ground is that no contention has been made here until the commencement of defendant's case in chief that there was a parol or oral assignment. It is our position that proof of oral assignment first brought forth at this time cannot be related back to the commencement of this action so as to avoid the Statute of Limitations. The further ground is that there is no evidence in the record of oral assignment.

Then going on to the Court's further language in which the Court defined an oral assignment—Your Honor, if you will permit me a moment, I think the Court added some additional language to this over the original draft that I had.

(Whereupon an off the record discussion took place between co-counsel for the defendants.)

Mr. Mac Laury: Well, we would except to the Court's language that "a transfer of the cause of action from one person to another is purely a matter of mind and intent on the part of the person making the transfer to make it, and also on the part of the person to whom it is transferred, whether to accept—" Now, I know there is some further language that my notes show, and I can't—

The Court: I think you will find a copy of that.

Mr. MacLaury: And that it requires mutuality of—

[6439] The Court: I added that.

Mr. MacLaury: And a meeting of minds?

The Court: Meeting of minds. Mutuality. Yes, I added that on. I went back to law school when I was reading that.

Mr. MacLaury: Well, our major objection here, Your Honor, is that we believe that an oral assignment must be expressed. It can't be just a matter of intent and a state of mind, that it must be an expression by the assignor and there must be an oral acceptance by the assignee.

In connection with the same instruction, we also except to the Court's language to the effect that a corporate officer may make an oral assignment or transfer a cause of the corporation. The grounds for this exception is that an officer or an executive cannot assign a right of the corporation without consideration unless approved by the directors or shareholders, and there is no such approval to this effect and there is no evidence of such approval or of any such joint action by any of the directors or shareholders. On the further grounds, Your Honor, that an oral assignment requires more than that the officer or the corporation have the mind or the intention to assign or transfer." This I believe I covered. And the same is true as to the acceptance.

Now, Your Honor, we do—again, I think the Court has changed in its instructions the draft that we originally [6440] had, and I have reference now to plaintiff's requested instruction 41, which relates to the meeting of competition defense. The language as I have it of the instruction was in sub-paragraph B "There must have been a definite"—and I quote, "There must have been a definite offer which was extended by a competitor of defendant Standard to a customer of the defendant." Now, it is our position that there need not be a definite offer but only the reasonable belief by Standard that a lower price was offered to Standard's customer by a competitor of Standard and

that Standard acted in good faith and on the reasonable belief that its lower price was extended to meet the competitive offer to Signal Oil and Gas.

The Court: I am greatly troubled about that.

Mr. MacLaury: Now, I do have some notes I scribbled quickly, and I cited for authority Federal Trade Commission versus—

The Court: No, I think I gave you the most favorable instruction that I could possibly could under your evidence. For example, supposing that Signal Oil and Union got together and they say, "Well, let's go rooker on Standard."

Mr. MacLaury: Go what?

The Court: Go rooker was the expression that I used.

Mr. MacLaury: Oh, yes.

The Court: And they went and told Standard that they [6441] got this offer from Union when they didn't, in fact, have it, but Standard had every reason to believe they had it. I covered you on it.

Mr. MacLaury: Are we covered?

The Court: I think that you are. I think in your own requests, you will read there that one was made or that you had reason to believe—

Mr. MacLaury: Well, I do see an addition, and as I read it now—

The Court: Let's see if I can find that now, because I thought—here is what the Bigelow case says about it. Is it Bigelow? No, your own case, Standard Oil. For example, the Court said, "If a large customer requests his supplier to meet a temporary lower price offered to him by one of his competitors, the seller might well find it essential as a matter of business survival to meet the price rather than lose the customer."

Mr. MacLaury: Yes.

The Court: That is what this testimony was here; that, in effect, Signal Oil came and told us. So I tried to tailor yours to cover that. What is the number of your—

Mr. MacLaury: It is plaintiff's requested instruction 41. My notes indicate, Your Honor, that this language was



given by the Court, and I quote, "There must have been a definite offer which was extended by a competitor of [6442] defendant Standard to a customer of defendant."

The Court: Now, those are the conditions that I read.

Mr. MacLaury: Then my notes indicate that the Court then went on to state later that "Standard cannot use this defense unless its customer, Signal Oil and Gas"—"unless Standard believes that its customer, Signal Oil and Gas, did in fact receive a competitive offer from another." It seems to me that there is a conflict in the language of those two sub-paragraphs.

The Court: Now, listen to this. Here is what I said: Now, I gave the premise that "there had to be a definite offer, you must be aware of it, you must have acted in good faith." Then I said, "Standard cannot use this defense unless it knew or was given to reasonably believe while acting as a prudent person in good faith that its customer did, in fact, receive a competitive offer."

Mr. MacLaury: Well, I would have no objection to that language.

The Court: I wouldn't think so.

Mr. MacLaury: But the previous paragraph after B, that reads—

The Court: Well, now, that is what the case said.

Mr. MacLaury: There must have been a definite offer?

The Court: That is what they say in pinpointing it. Your own case of Standard against the Trade Commission says [6443] that.

Mr. MacLaury: Well, Your Honor, we will, for the record, let our exceptions stand to—

The Court: Yes, I think you are entitled to it, but I did my best to tailor it to your facts.

Mr. MacLaury: Yes. All right.

Then we come to plaintiff's 49, which are the—

The Court: Yes. I interpreted those instructions. My interpretation was that ordinarily there has to be an offer made and there ordinarily would be an offer to meet, and



you wouldn't have anything to meet. So that is the premise. But somebody comes around and defrauds you or tries to pull your leg, and you didn't have an offer but he tells you that he did and he leads you to believe so, I covered you on that situation.

Mr. MacLaury: Well—

The Court: I tried to.

Mr. MacLaury: May we go on to the plaintiff's instruction number 49, which deals with the question of measure of damages. Well, it was our position, Your Honor, that it was in error to say in the preliminary portion of the instruction that the Court is instructing as to the measure and method of determining damages and then list elements—the elements which were requested by plaintiff in his instruction 49, which it is our position is not the [6444] proper measure of damage. I think that has been consistently our position throughout this case.

The Court: Yes.

Mr. MacLaury: And we don't think that this area, which we believe would likely mislead the jury, could be corrected by simply labelling this list of measures of damage or guides in plaintiff's requested instruction number 49 as simply plaintiff's contentions or their claims. We have already pointed out that we see a conflict between the first paragraph there, the amount, which begins with the language "the amount of price differential on gasoline sold by defendant Standard Oil to plaintiff." The conflict between that and the instruction, I think, is defendant's instruction 81 on the automatic damages.

The Court: I recall.

Mr. MacLaury: Our grounds generally for objecting to or excepting to 49 are that the automatic damage rule is invalid; and, further, during much of the claim period, there was no competition between plaintiff or his assignors and Signal Oil and Gas or its customers.

Secondly, Your Honor has corrected the gross profits. I believe that the second paragraph now reads, as Your

Honor gave it, the loss of profit rather than loss of gross profit.

The Court: I struck "gross".

[6445] Mr. MacLaury: Yes. "Loss of gross profit on volume of gasoline sales which plaintiff estimates and claims were lost by reason of such discrimination." Well, we submit that it isn't plaintiff's estimates and claims which would be the proper measure of damages here, but only those net profits lost which are proven by a preponderance of the evidence. Again, we would take exception to the use of the loss of profits estimated on the volume of fuel oil sales as a measure of damages. I have reference to the ruling that there was no discrimination with respect to the sales of fuel oil. And I realize that the Court has in mind the loss of fuel oil sales which can be tied in to the loss of gasoline sales caused by discrimination.

The Court: Yes. There was some testimony on it.

Mr. MacLaury: But we feel there is nothing in the record to justify that.

The Court: I understand that.

Mr. MacLaury: We would except to the reference to the so-called restroom and maintenance allowances, again on the grounds that this appears to be merely a re-statement of the automatic damage rule, and the only proper measure of damages recoverable under Sections 2-E and 2-D are those damages reasonably certain in amount which can be traced to an adverse impact upon plaintiff's business and property.

[6446] Now, what this instruction appears to do is simply lump here as a measure of damage all restroom and maintenance allowances and the furnishing of credit cards services and lease it up to the speculation of the jury, without any guidance or direction that there must be some connection between these allowances and the damage to the plaintiff. We don't believe that this is tied in clearly here in this instruction to the 2-D and 2-E claims.

Again, in the next portion of that instruction, which re-

fers to the going concern value of the business, the decrease, if any, in the going concern value of the business by reason of the claimed discrimination with respect to stations owned and leased by plaintiff Clyde Perkins. Clyde Perkins, we submit, individually has no claim as a landlord. He has no claim as a marketer, and a decrease in the going concern value of stations owned or leased by him is not a proper measure of damages. Further, insofar as that instruction refers to stations leased by Perkins Oil Company of Washington, or either of them, and it states here that the decrease in depreciation, if any, in the going concern value of the fuel oil business of the plaintiff Perkins and the two corporations, we submit that there has been—again, there is no discrimination in the sales of fuel oil, and thus any depreciation in the value of the fuel oil business of the plaintiff or its assignors [6447] is not a proper measure of damages here. There is no evidence here that a depreciation in the going concern value of the fuel oil business was proximately caused by a discrimination in the prices of gasoline which would warrant such a measure of damages being included among these instructions.

[6448] Mr. MacLaury: (Continuing) So far as the leasehold interest of the Perkins Oil Company of Oregon and Perkins Oil Company of Washington, in line with Your Honor's other instructions on the evaluation of going concern and good will, we submit there is no evidence here that those leasehold interests had a going concern or good will value or that the same is depreciated. "

Now, with respect to the payments subsidies or allowances not reflected in other factors taken into consideration by you, and I am referring to the language of the Court, but which you find on the basis of the evidence before you, and the Court goes on to refer to payments by defendant Standard to Signal, it is not clear nor is it stated whether these factors are to be taken into consideration as price discriminations under Section 2(a) or in connection with 2(d).

If under 2(d), there is no consideration given to the fact that plaintiff or his assignors were in different functional trade classifications from Standard's branded dealers and it is our position that the instruction indirectly implies that price or assistance or subsidies made to Standard dealers are a discrimination, even where the price to such dealers after the deduction of such assistance is still higher than the amount paid by Perkins.

Now, again, the next paragraph, beginning with the language, "any services and facilities furnished or agreed [6449] to be furnished by defendant Standard Oil—we submit that the paragraph again incorrectly implies that the jury may apply the automatic damage rule and further disregards the reasonable classification by Standard of its customers, in particular its Chevron and Signal dealers and as separate and apart from jobbers supplied by Standard. We further except to this entire instruction on the measure of damages on the ground that although the instruction states that plaintiff may not recover the same element of damages more than once, the jury is not given any reasonable guide as to how this duplication of damages is to be avoided, nor does the jury have any—

The Court: Wasn't that your own requested instruction?

Mr. MacLaury: No, Your Honor.

The Court: Maybe I jumped the track a little. About doubling up?

Mr. MacLaury: We had one instruction with respect to doubling up on good will and loss of sales. This is just a—this has seven categories of measures of damages, in our opinion it would leave the jury at sea as far as any real direction in how to estimate with any certainty the amount of damages that plaintiff should recover. Nor is there any real direction as to the method the jury may use to calculate the recoverable damages.

I have one more, I think. No, there are several more [6450] exceptions. It is getting late, I think probably I ought to finish up this evening. Does Your Honor agree?



The Court: You might as well finish and let the reporters—

Mr. Bonyhadi: We won't need it today.

Mr. MacLaury: With respect to Plaintiff's Requested Instruction No. 38 given by the Court, the measure of damages referred to there, it is our position it is not one based on probable, it is not one properly based on probable and inferential proof. The measure should be described as reasonable estimates or approximation by the jury of the actual damages suffered as established by a preponderance of the evidence.

Now Plaintiff's 39, which was given by the Court, we submit the instruction should be limited to sales of gasoline. That instruction refers to the sales of petroleum and related products by Perkins and states if the jury finds that such sale declined by reason of the claimed discrimination by Standard, then you must determine the amount of damages suffered by the plaintiff, et cetera. As I say, it is our position that the instruction should be limited to sales of gasoline. There is no evidence of any discrimination in the sale of other petroleum products and the words "related products" was not defined and includes products as to which no discrimination has been claimed or proved, and [6451] as to which there has been no evidence in this lawsuit. Further, a decline in sales is not a proper measure of damages but only a loss of net profits which would have been earned but for the proven price discrimination are recoverable. And these net profits are a proper measure of damages only if the net profits were lost by virtue of a diversion of customers of plaintiff to the favored purchaser of Standard or their customers.

We would also take exception to the—well, then I think properly so here—to the use of the phrase "so-called claim period." Plaintiff has claimed in this lawsuit a claim period at times extending from March of '55 up through August of '58, and the defendants have insisted that the



proper period is cut off in the 2nd of December or the end of November of 1957.

Now, with respect to Plaintiff's Requested Instruction No. 40, which was given by the Court, which reads—it is for you, the jury, based on the books and records of plaintiff, Clyde Perkins, Perkins Oil Company of Oregon and Perkins Oil Company of Washington and the expert testimony to determine loss of potential profits suffered by the parties." We submit that the jury must determine the proper amount of loss, not on the books and records of plaintiff and Perkins Oil Company of Washington and Perkins Oil Company of Oregon and expert testimony, but upon all of the [6452] relevant evidence in the record. So far as the phrase "expert testimony" is used, we would except to the implication that the testimony of Dr. Mund may be used by the jury to determine loss of profits or potential profits. Dr. Mund's testimony did not extend to plaintiff's business nor to the area in which he claims to have marketed. I think we all recall that those figures that he put on the easel and insisted that this particular example without any reference to injury to competition, without any reference to any of the elements of causation, insisted that inevitably where there is a discrimination inevitably there will be this resulting damage to the business of the person discriminated against and without any connection to this case.

We would also object to the use of the words "potential profits" as opposed to reasonably expected net profits from sales lost by reason of discrimination, and we submit that potential profits are not in and of itself a proper measure of damages. The instruction improperly assumes that Clyde A. Perkins and Perkins Oil Company of Washington and Perkins Oil Company of Oregon were no longer able to continue in business as a result of the acts of Standard and there is no evidence which would support this assumption.

There is no evidence further that Clyde Perkins operated any business of his own which could have been injured by any price or [6453] other discrimination by Standard, and we find in the instruction the implication that there was.

Nor is there any evidence that going concern value or good-will value of Perkins of Oregon or Perkins of Washington, if any they had, declined as a result of any violation by Standard under the Robinson-Patman Act and further that the use of the phrase "among other things" is so indefinite as to leave the jury with respect to this instruction without appropriate and proper guidance.

I think that about finishes our exceptions for the record, Your Honor.

The Court: Let the record show your exceptions.

Mr. Mac Laury: Thank you, Your Honor. Let the record show it is 11:00 P. M.

• • • • •

**XI. MISCELLANEOUS**

**A. Memorandum by Roger Tilbury, Esq.**

[1054]\*

(Filed Sep. 12, 1963)

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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

CLYDE PERKINS, *Plaintiff,*

v.

STANDARD OIL COMPANY OF CALIFORNIA, a corporation;  
HARRIS OIL COMPANY, a corporation; HARRIS DISTRIBUTING COMPANY, a corporation; and LEE POWELL,  
*Defendants.*

**Memorandum of Authority in Support of Plaintiff's  
Supplemental Contentions**

*To The Honorable William G. East, United States District  
Judge:*

In response to the memoranda order of this Court dated August 13, 1963, which directed that plaintiff lodge his supplemental contentions of fact and a memoranda in support thereof, plaintiff respectfully submits the following memoranda:

The basic question presented by the supplemental contentions seems to be as follows:

Can a recovery be obtained for the losses of Perkins Oil Company of Oregon and Perkins Oil Company of Washington, Inc. as the result of price discriminations extended

\* Page references in Section XI are to the Clerk's transcript of record in the Court of Appeals.

by Standard Oil Company in favor of Signal Oil & Gas Company and others and against their supplier, Clyde Perkins, even though they did not make purchases direct from the defendant Standard Oil Company?

[1055] CONCLUSION:

Yes.

DISCUSSION:

The right to sue is governed by Section 4 of the Clayton Act<sup>1</sup> (15 USC Sec. 15), which provides as follows:

"That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

There is no requirement of privity. It will also be noted that Section 2 of the Robinson-Patman Act (15 USC Sec. 13) provides:

"That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or *indirectly*, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the bene-

fit of such discrimination, *or with customers of either of either of them: \* \* \*.*" (Italics supplied).

It will be noted that the Act extends to customers of any purchaser as well as purchasers themselves, and includes indirect as well as direct forms of discrimination.

Representative Patman in his recent book (Complete Guide to the Robinson-Patman Act, 1963, Page 32) states:

"The word 'purchaser' within the meaning of the [1056] Robinson-Patman Act is not limited in its application to buyers of his product who buy direct from the seller charged with discrimination. The Federal Trade Commission defines the word 'purchaser' as it appears in subsection 2(a) in the following manner: "A retailer who purchases respondent's goods from jobbers and wholesalers is considered by the Commission to be a "purchaser" within the meaning of the Robinson-Patman Act, as well as retailers buying direct.' "

A recent article in 70 Yale LJ 469, 479 concludes that:

"Treble damage recovery is not limited to those in privity."

This rule has been accepted by virtually all of the adjudicated cases.<sup>3</sup>

It should be noted also in passing that if this were a true consignment, as defendant contends, then The Perkins Oil Corporations would be direct customers of Standard since Clyde Perkins would be defendant's agent.<sup>3</sup> If this were the case, then it would be unnecessary to consider the question of privity because, as stated by Representative Patman, under such "agency relationship, all the customers of the wholesale-agent are, in fact, customers of the manufacturer" (Complete Guide to Robinson-Patman Act, 1963, Page 18).

There is also no question that a corporation can recover for its losses as well as an individual and this is expressly



provided in Section 1 of the Clayton Act (15 USC Sec. 12).<sup>4</sup>

It is also unquestioned that the Clayton and Robinson-Patman Acts presently encompass an injury irrespective of the level at which it occurs (primary, secondary or tertiary)<sup>5</sup> (See also our letter to Your Honor dated June 18, 1963).

Of course, we again reiterate the position which we have maintained from the inception of this action, namely, that [1057] Clyde Perkins sustained the total damage in this case, in any event, since he was the only individual who made purchases from the defendant Standard Oil Company. However, we recognize that the Perkins Oil Companies, as purchasers, also sustained damages which overlap to some degree since the products were in many instances sold in stations which they leased from the plaintiff, Clyde Perkins, and from others. However, to the extent they overlap, the point we submit is moot because they have executed assignments of all of their interests to Mr. Clyde Perkins prior to the filing of this action. As discussed in the prior brief, the authorities agree that an assignment can be made of an antitrust claim and in that event the assignee is the proper party to bring the action.<sup>6</sup> Such an assignment was unnecessary in any event, since Mr. Perkins was the only proper party, but to avoid a technical problem of this nature, an assignment was executed.

Respectfully submitted,

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[1058]

<sup>1</sup> 70 Harvard LR 387, 537.

<sup>2</sup> *Elizabeth Arden v. FTC*, CA 2, 156 F2d 132, 135; *Roseland v. Phister*, OCA 7, 125 F2d 417; *American News Co. v. FTC*, CA 2, 300 F2d 104; *Sidney Klein v. Sales Builders*, ND Ill., 50-1, TC 62, 600; *McWhirter v. Monroe Calculating Machines Co.*, DO Mo., 76 FS 456; *Krug v. International Tel. and Tel. Corp.*, 142 FS 230 NJ; This is especially true if the manufacturer controls the intermediate. *Kraft-Phoenix Corp.*, 25 FTC 537; *Lusor*, 31 FTC 656, 40 Cal. LR 526, 540.

<sup>3</sup> Patman Complete Guide to Robinson-Patman Act, Page 18; Rowe, Price Discrimination Under the Robinson-Patman Act, Page 52.

<sup>4</sup> See also 15 USC Sec. 26 (Injunction). OCH, Trade Regulation Reporter, Sec. 9034.

<sup>5</sup> 15 USC, Sec. 13; *Van Camp v. American Can Co.*, 278 US 245; Patman Complete Guide to Robinson-Patman Act 1963, Page 49; Goldstein, Trial Lawyer's Guide, page 457; Senate Report No. 1502, 74th Congress, Second Session 4; H.R. Rep. No. 2287, 74th Congress, 2nd Session 8, 1936; 80 Congressional Record 3113 (Remarks by Senator Logan); 80 Congressional Record 9417 (Remarks by Congressman Utterback); 4 Vanderbilt LR 221, 239; 60 Harvard LR 571, 581; 46 Michigan LR 450, 459, et seq.

<sup>6</sup> *American Co-op Serum Association v. Anchor Serum*, 153 F2d 907, OCA 7; *Kentucky, Tennessee L & P v. Nashville*, 37 FS 728, Ky.; *Momand v. 20th Century Fox*, 37 FS 649, Okla.; Moore's Federal Practice, Vol. 1A, 3732; 7 Antitrust Bulletin 3.

### B. Excerpts From Transcript of Proceedings

[1480] the document bears a title assignment, is that right, does it have some title?

The Witness: It does not have a title.

The Court: Say it is a document and tell who it is signed by.

The Witness: This is a document and it is signed by myself as secretary of Perkins Oil Company of Washington.

The Court: Very well.

Q. (By Mr. Tilbury) Look at 17-B, please.

The Court: Is there a date on it?

The Witness: No, there is no date on either document.

The Court: Very well.

The Witness: And the 17-B is another document signed by myself, as secretary of the Perkins Oil Company of Oregon.

Q. (By Mr. Tilbury) How about 17-C?

The Clerk: 17.

The Witness: There is no C. No. 17, this is a document that is signed by Mr. Lennington and myself and also by myself as a partner of the partnership that Mr. Lennington and I owned at that time.

Q. (By Mr. Tilbury) All right. When did you sign this, do you recall? A. Well, I signed this, I know when, but I couldn't pinpoint the date. The only reason I could tell you when is because it was signed just prior or presumably prior to [1481] filing the—

Mr. Hilliard: (Interposing) Your Honor, I object to any presumptions of when this was signed. The witness can either answer when it was signed or he does not know when it was signed. He is not entitled to make presumptions.

The Court: He may finish his answer.

The Witness: I know when it was signed in relation to one other act, Mr. Hilliard.

The Court: You may finish your answer.

The Witness: It was signed just prior to the filing, or what I thought was the filing date of the Standard Oil case.

Mr. Hilliard: May I ask, there are three Standard Oil cases filed by this Clyde Perkins. If he is referring to one of those, I would like it specified.

The Court: You may.

The Witness: My knowledge at that time there was just one Standard Oil case and I didn't know it was going to become three cases at that time.

Mr. Hilliard: May we ask the witness to specify which case he is talking about?

The Court: He just said he understood there was one.

Q. (By Mr. Tilbury) Had anything been filed, if you recall? A. To my knowledge nothing had been filed at that time.

[1485] Mr. Tilbury: I wonder if the witness could be shown Exhibit 17, and perhaps he has it already; and I think we have this labeled as A, B, and C. Oh, 17. Well, excuse me just a minute. I think this 17 seems to be the one.

Q. (By Mr. Tilbury) Mr. Lennington, this is a photo-static copy, and I believe that we can agree that this was introduced as an original in the other case? A. Yes.

Q. Do you recall seeing a document like that or signing a document like that? A. Yes, this is my signature.

Mr. Hilliard: May we have the number of the document?

Q. (By Mr. Tilbury) Yes, would you identify the number? A. This is Exhibit 17, Case 369-59.

Q. What sort of document is it?

Mr. Hilliard: Well, if the Court please, I move to strike that, your Honor, as a conclusion of the witness.

Mr. Tilbury: Well, it is an assignment.

The Court: It is not meaningful unless he can identify it I think to the jury. As long as the jury understands that that is just a title that he is given for identification.

Mr. Tilbury: Yes, I would certainly agree that that is all it is.

Q. (By Mr. Tilbury) Do you recall, Mr. Lennington, this [1486] document that you refer to, when that was signed? A. Well, not exactly. I would say probably in the late '58 or early '59.

Mr. Hilliard: Your Honor, I would move to strike the speculation of the witness. If he does not know—

Mr. Tilbury: Maybe I could ask another question.

Mr. Hilliard: Is the motion granted?

The Court: No, he wants to clarify it.

Q. (By Mr. Tilbury) Could you identify it in terms of the filing of this lawsuit or any other lawsuit or anything else that might help pinpoint the time? A. I had certainly signed this prior to the filing of the lawsuit.

Mr. Hilliard: I move, your Honor, to strike the answer.

The Court: It will be denied.

Q. (By Mr. Tilbury) Mr. Lennington, as I understand it, trucking was another area that you were watching more or less when you were with the Perkins Company? A. That is true.

• • • • •  
[1509] Mr. Hilliard: May I ask then that counsel's answer is "Yes," you did supply Mrs. Ross with the language for document 17? •

Mr. Tilbury: As I recall the circumstances, I suggested that we have this because you were trying to raise a point because of their absence even though you objected to my bringing them in, and I suggested that they follow the language that had been used in the earlier assignment. I don't think I gave her the specific language. I compared them recently, but I think you will find the language is very similar to 17A and 17B.

The Court: I don't think you had better ask another question.

Q. (By Mr. Hilliard) Now, let me ask this, now, counsel has made a statement here which I would like to pursue with you, Mrs. Ross; he said that he had you type this



17 because I had taken a position about the interest of these parties; now, if I tell you that the record shows that the first time I raised the question about these parties was in the deposition of Mr. Clyde Perkins on May the 2nd, 1962, and for the next succeeding four days thereafter, would that refresh [1510] your memory that document No. 17 was typed after May the 2nd, 1962?

Mr. Tilbury: Well, I think the record should also show that Mr. Hilliard came in this case late.

The Court: You may take the witness on direct. This is cross-examination. Do not interrupt counsel.

Mr. Tilbury: Well, Your Honor—

The Court: Do not interrupt counsel.

Q. (By Mr. Hilliard) Does that refresh your memory on the date that you typed Exhibit 17 under the direction of Mr. Tilbury? A. Mr. Hilliard, that couldn't possibly refresh my memory. I know nothing about Mr. Perkins' deposition. I know nothing about that particular portion of it. I wasn't present when he give a deposition.

Q. Do you remember the date that the Northwest Petro Chemical Company, the name of the chemical company this Selectromatic typewriter was ordered for; now, was your memory refreshed that it was at least eight months after that date, the date the document, 17, was typed by you? A. Will you say that again?

Q. Now, after knowing the date this typewriter was purchased, do you now recall that it was eight months after that date before Exhibit No. 17 was typed? A. After what date?

• • • • •

C. Letter From Roger Tilbury, Esq. to the Hon. William G. East

[1717]

ROGER TILBURY

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June 18, 1963

Hon. William G. East  
U.S. District Judge  
U.S. Court House  
Portland, Oregon

Re: Perkins v. Standard Oil 369-59  
Defendant's PROPOSED PRETRIAL  
ORDER No. 1(c)

Dear Judge East:

Defendant seeks to exclude all evidence of prices charged to other accounts by defendant except sales to other jobbers as it defines that term on the mistaken premise that plaintiff's activities in the petroleum business were confined to jobber sales.

Such is not the case. Clyde Perkins so testified during the trial of 331-59 and at his deposition. Defendant predicates this assumption upon the answer to interrogatory 2 where plaintiff stated he did not sell products "direct to the retail trade." This statement is true because his method of operation was to lease his stations to an independent operator on a gallonage basis. There was one exception in the Vancouver, Washington, area where he hired a company operator. We will amend our answer to show this one exception. However in the usual situation the stations were leased to independent operators on a gallonage basis. Mr. Perkins was affected in these situations by the practices of Chevron stations in the vicinity since his rent was tied to the number of gallons

which were sold in his stations. Defendant's interrogatory # 2 asked the plaintiff to list "each retail customer of plaintiff." Since these sales were sales by the independent lessees they could not be regarded as sales by Clyde Perkins. Probably by the same token defendant does not regard sales by Chevron stations (where the operators are allegedly independents) in the same fashion it regards sales by Standard Stations, Inc., where the employees are company men. We have never limited our claim for damages to the jobber sales category, which fact is well known to defendant. For example in the interrogatory which preceded this interrogatory (#1) defendant ask us to list the names of the recipients of defendant's discriminatory pricing practices. Our answer specifically lists Chevron as one of these recipients. These answers have been filed for almost four years. During the marathon deposition of Clyde Perkins taken by defendant's counsel, which must have shattered all records in this state, many questions were asked concerning this charge.

There is no mystery regarding our charge of discrimination in favor of Chevron dealers. It has always been known to defendant's counsel.

[1718] The basic question seems to be as follows:

Is the price discrimination law violated if a retailer acquires his products from the manufacturer at a lesser rate than a jobber, who is also engaged in the retail business as an owner and lessor, where such retailer and jobber resell the products obtained from the manufacturer to the identical consuming public, assuming the other elements mentioned in the Act are present?

In light of its history and judicial interpretation the question can only be answered in the affirmative.

One of the primary purposes of the Act was to forbid large retailers from acquiring their products from the

same manufacturer or supplier at lower rates than wholesalers or jobbers. These retailers were in many instances able to pass along a part of the saving to the public and thereby undersell these retailer who acquired their products through wholesalers or jobbers. Congress was particularly troubled by the growth of these large direct purchasing retailers, who in the eyes of Congress threatened the independent merchant with extinction. (79 Cong. Rec. 11575, 6; 80 Cong. Rec. 3117; Report of the Federal Trade Commission, page 36; Hearings Before the House Committee on the Judiciary on Bills to Amend the Clayton Act, 74 Cg., 1st Sess 5-6, 1935; Hearings Before the Anti-Trust Subcommittee of the House Committee on the Judiciary on Bills to Amend Section 2 & 3 of the Clayton Act, 84th Cong., 2d Sess 57, 1956). So strong was this feeling that the Act itself is sometimes referred to as the Anti-Chain Store Act. Congress took violent exception to the practice of large retailers who used the economic power of their organization to wrangle additional allowances not available to wholesalers or jobbers.

It is expressly provided, and universally acknowledged, that the Act is violated if the adverse competitive effects involve either the line of commerce in which the seller is engaged, the line of commerce in which his customers are engaged, or the line of commerce in which customers of the favored purchasers are engaged (the so-called primary, secondary, or tertiary line of competition). (15 USC # 13; Complete Guide to the Robinson-Patman Act by Wright Patman, p. 49, 1963). In this case both secondary and tertiary lines were affected.

The Act makes it:

“unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality,

where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: . . . .” (15 USC 13a).

The Act applies to the case where a wholesaler who acquires his products is obliged to pay more for the same products than a retailer. For example in *Krug v. International Tel & Tel Co.*, 142 FS 230, NJ, [1719] a wholesaler was required to pay more for his products than a retailer who purchased directly from the same supplier. The Act was violated. (See Chart A). This is the situation in this case where Mr. Perkins was charged more for the same products than Chevron dealers who acquired their products direct from Standard. Mr. Perkins was in direct competition with Chevron Stations in those situations where he owned the retail stations. Where he resold the products to retailers, as he did in some instances, these retailers were also in direct competition with Chevron Stations. The Act by its terms applies to either direct or indirect discrimination. As in *Krug* the products were being resold to the same group of ultimate purchasers, the consuming public (See Chart B).

In *FTC v. Morton Salt*, 334 U.S. 37, the High Court struck down the Morton price schedule because while theoretically the discounts were available to all, practically they were not, and in fact only a few large retailers were



in a position to take advantage of them. The court commented that probably no "single wholesaler" was able to utilize them. It is unlawful to charge a lower price to retailers (if it is not covered by one of the exceptions) than to wholesalers if competition is affected.

Frederick Rowe in his recent book ("Price Discrimination under the Robinson-Patman Act, 1962) (1c 175) states:

"A typical price discrimination detrimental to competition arises from lower prices granted to large retailers than to wholesalers or jobbers. For in such a case, the retailer paying the preferential price can resell to consumers at lower prices than those retailers who pay more to the wholesalers which are charged a higher price by the supplier. Hence the forbidden statutory "injury" to competition with the recipient of the discriminatory lower price-the retailer paying less-may readily come to pass on the retailer level."

This case is altogether different from the Secatore case (Secatore's Inc. v. Esso Standard Oil Co., 171 FS 665, Mass) where the manufacturer sold to a retailer at a higher rate than Esso sold to certain industrial or commercial users. These last companies were strictly consumers. None of them sold a drop of gasoline acquired from defendant. Instead they used the products for their own equipment. In short they did not compete with plaintiff, the retailer, in any way. There was no competition, directly or indirectly, between plaintiff and the recipient of the discriminatory price. The plaintiff was a retailer who sold the gasoline to automobile owners who came to his station. He had no facilities for delivering or selling off the premises. Thus he couldn't reach the consumers to whom defendant made sales anyway. (See Chart C).

In the Perkins case the Chevron stations sold the identical products to the identical group of consumers. Competition was direct and intense.

Respectfully submitted,

ROGER TILBURY  
Roger Tilbury

cc: Koerner, Young, etc.

RGT: ab

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APPENDIX  
Volume II

Supreme Court of the United States

October Term, 1968

No. 624

CLARENCE A. PERKINS, Petitioner,

v.

STANDARD OIL COMPANY OF CALIFORNIA, Respondent.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT  
IN APPEALS FOR THE NINTH CIRCUIT

# Supreme Court of the United States

OCTOBER TERM, 1968

No. 624

CLYDE A. PERKINS, *Petitioner,*

v.

STANDARD OIL COMPANY OF CALIFORNIA, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT

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Rptr	
Date	Clerk

Exhibit	2
Case	36-51
Rptr	
Date	Clerk

CONS. AND CONSIGNEE

THIS AGREEMENT, executed the 6th day of April, 1953, between STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation, hereinafter called "Standard," and LEE G. POWELL, CLYDE A. PERKINS, and JOSEPH M. HARRIS, hereinafter collectively called "Consignee,"

## WITNESSETH:

1. Standard agrees to consign to Consignee and Consignee agrees to receive and sell for Standard pursuant to the authority herein provided (but with no other authority), and upon the terms and conditions of this agreement, the products of Standard specified in paragraph 2 hereof, as marketed by Standard during the term of this agreement, and hereinafter referred to as "Products."

2. The products covered by this agreement are first brand gasoline, second brand gasoline, kerosene, diesel and furnace oils, stove oil, and automotive diesel fuel. Such products shall be of the same grade and quality as are distributed by Standard generally in the area covered by this agreement. If Standard discontinues marketing in any area any products agreed to be consigned hereunder, this agreement shall thereupon terminate as to such product or products; provided, however, any product marketed by Standard in said area in place of any such discontinued product may be included under this agreement under terms mutually agreed upon between the parties hereto.

3. Consignee is authorized to sell products consigned hereunder, on a non-exclusive basis, only in the area outlined and indicated on the print marked Exhibit "B" attached hereto and made a part hereof. Consignee shall not sell or distribute any of the products consigned hereunder to other than service station or consuming accounts. In the event Consignee desires to sell or distribute said products to resale accounts not selling through service stations exclusively, Standard's written consent shall first be secured.

4. The term of this agreement shall be from September 1, 1953, to August 31, 1958, and thereafter until terminated by twelve (12) months' prior written notice from either party to the other of intention so to do, provided, however, such notice shall not be served by either party prior to August 31, 1958.

5. Consignee shall receive products hereunder into tank cars or tank truck and trailers or barges, as arranged by Consignee, in minimum lots of 5,000 gallons, at supply points designated by Standard from time to time. At present, such supply point shall be Standard's Willbridge, Oregon, supply terminal. The measurement of quantities consigned hereunder shall be determined at said supply points at time of delivery to Consignee.

All products consigned in bulk hereunder and received by Consignee from Standard at said supply points shall, except as otherwise authorized by Standard, be placed by Consignee into storage tanks located at Consignee's bulk plants in the area covered by this agreement. Consignee's bulk plants in the area covered by this agreement are located at Vancouver, Washington, and Kenton, Oregon. Consignee agrees not to adulterate any product consigned hereunder or mix the same with any other product or substance whatsoever. Sales of said products from time to time made by Consignee on behalf of Standard shall be made by delivery out of the quantities so placed in storage.

6. For the purpose of this agreement, the following quantities of products shall be deemed to constitute a sufficient operating consignment to be carried on hand by Consignee from time to time at Consignee's said bulk plants:

Product	Quantity - Gallons
First Brand Gasoline	73,215
Second Brand Gasoline	68,254
Kerosene	5,000
Stove Oil	36,755
Diesel/Furnace Oil	36,900
Automotive Diesel Fuel	5,000

If Consignee shall hereafter increase its storage capacity for products, then the amount of said operating consignment, at the option of Standard, may be increased in proportion to the said increase in storage capacity.

Commencing at the date of this agreement, Standard shall make, and Consignee shall take possession of, consignment deliveries of products until Consignee shall have the operating consignment of products above set forth. As Consignee makes sales of consigned products it shall account to Standard for the proceeds of such sales as hereinafter provided. As such sales are made, Consignee shall order such additional quantities of products as may be necessary to keep on hand a consigned stock equal to said operating consignment; provided that during the last month of the contract term Consignee may make sales hereunder out of said operating consignment without ordering such additional quantities, to the extent necessary to eliminate, so far as is practicable, the existence at the expiration of the contract of unsold consigned stocks to be redelivered to Standard. Standard shall have the right during business hours on any business day to inspect and measure the consigned stocks in Consignee's possession hereunder.

7. Consignee agrees to use its best efforts to promote the sale of products consigned hereunder, and it is agreed that such promotion of sale by Consignee should result in sales of the following specified quantities of products during each contract year of this contract:

Product	Specified Quantities (Gallons)	
	First Contract Year (September 1, 1953 to August 31, 1954)	Each Contract Year From and After August 31, 1954
Gasolines (First Brand)	8,300,000	The immediately preceding contract year's specified quantity for the products involved, plus 10%.
(Second Brand)	13,700,000	
Kerosene	300,000	
Gas Oils (Stove Oil)	7,500,000	
(Furnace Oil)	8,200,000	
(Diesel Fuel)	4,200,000	
Automotive Diesel Fuel	100,000	

In the case of the products bracketed above, Consignee may reduce consignment deliveries of one product and increase those of another within the same product bracket by not more than twenty-five percent (25%) of the specified quantity of the former. Any such reductions and increases shall be adjusted for in applying the percentages hereafter stated in this Paragraph 7.

Except at Standard's option, it shall not be obligated under this agreement to make consignment deliveries during any contract year of quantities of any product in excess of the specified quantity of such products applicable to such contract year as above set forth in this paragraph. Specified quantities for a portion of a contract year shall be on a proportionate basis. Consignment deliveries hereunder shall be in approximately equal monthly quantities, subject to reasonable seasonal variations, but Standard may from time to time during such periods as it may deem appropriate, require consignment deliveries to be in approximately equal weekly or daily quantities. If Consignee fails to make sales in any contract year of at least sixty percent (60%) of the quantity of each product specified in this paragraph, it shall be deemed that Consignee has not fulfilled its obligation to use its best efforts to promote the sale of products consigned hereunder, and Standard shall have the right within thirty (30) days after the close of such contract year, to terminate this agreement by giving Consignee sixty (60) days' prior written notice of termination.

8. Title to all products consigned hereunder shall remain in Standard until sold by Consignee on behalf of Standard, and Standard shall bear the risk of loss or damage thereto occurring prior to delivery to the customer, except that loss or damage caused or contributed to by the fault of the Consignee or those employed by or acting for Consignee shall be borne by Consignee; and except that ordinary losses in handling, including, but not limited to, spillage and evaporation losses, shall also be borne by Consignee.

9. Products consigned hereunder shall be posted and sold by Consignee at the price posted or authorized by Standard at the time and place of sale for the same or similar products and particular type of delivery, quantity, and class of sale involved.

All sales hereunder shall be for cash unless Consignee elects to assume the risk for credit sales. If Consignee makes credit sales, Consignee will account to Standard for such sales as though the same had been made for cash.

Standard reserves the right to select its customers.

Subject to the provisions of paragraph 13 hereof, Consignee shall account to Standard for the proceeds of all sales hereunder, and the commissions to be paid by Standard to Consignee for selling the products consigned hereunder shall be determined, as provided in Exhibit "A" attached hereto and made a part hereof. All such proceeds shall be held by Consignee as trustee for Standard until such proceeds are paid to Standard as provided in Exhibit "A."

Consignee agrees to keep complete and accurate records of the sales made by it hereunder and of the proceeds of such sales.

All expenses incurred by Consignee in connection with Consignee's performance under this agreement, including (but not by way of limitation) all expenses of transportation, handling, storage, sale and distribution of the consigned products, shall be paid by Consignee, the amount of commissions payable to Consignee having been so computed as to allow for all such expenses.

10. All products consigned hereunder shall be sold under brand names or other product designations approved by Standard, and Consignee shall not authorize or permit said products to be resold under any other brand names or designations. Consignee agrees not to represent that products consigned hereunder are products of Standard, unless Standard otherwise authorizes Consignee in writing; and there shall be no identifications, designations or markings of any kind upon any transportation, storage or other facilities or equipment used for transporting or storing, or in connection with the handling or sale of any product consigned hereunder, that would identify any such product with Standard.

11. In connection with the performance of this agreement, Consignee is engaged in an independent business and nothing herein shall be construed as granting to Standard any right to control Consignee with respect to his conduct of said business. Standard has no right to exercise any control over any of Consignee's employees, all of whom are entirely under the control and direction of Consignee, who shall be responsible for their actions and omissions. Consignee shall at its own expense, during the term hereof, maintain full insurance under applicable Workmen's Compensation Laws, covering all persons subject to said laws employed by and working for Consignee in connection with the performance of this agreement, and upon request shall furnish Standard with satisfactory evidence of the maintenance of such insurance. Consignee shall pay and bear all contributions and payroll taxes required under the Federal Social Security Laws and State Unemployment Compensation Laws, or other payments under any laws of similar character, as to all persons employed by and working for Consignee.

12. Consignee agrees to protect, defend and hold Standard harmless from and against all claims for damage to property (including Consignee's property) or injury to or death of persons caused or contributed to by, or directly or indirectly resulting in any way from, any acts or omissions of Consignee or Consignee's employees.

Consignee, at its own expense, shall secure and maintain insurance in companies, forms and amounts satisfactory to Standard, but such amounts shall be for not less than \$200,000/\$200,000 Bodily Injury and \$100,000 Property Damage, specifically to cover the foregoing assumed liability, and shall furnish Standard with satisfactory evidence of such insurance. Consignee, at its own expense, shall also secure insurance as nearly as possible against all risks of loss or damage to the consigned products, in the amounts, companies and policy forms satisfactory to Standard under policies naming Standard as an additional insured and making losses payable to Standard or Consignee as their interests may appear.



All policies of insurance shall provide against termination by the insurer without ten (10) days' prior written notice to Standard, and the policies or certificates of insurance shall be endorsed "Premium paid" and deposited with Standard.

13. Any tax, duty, toll, fee, impost, charge or other exaction, or the amount equivalent thereto, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or, the transportation, production, manufacture, use, sale or ownership of the goods the subject matter of this agreement, if collectible or payable by Standard and deducted from or not included in the amount at which Consignee shall account to Standard as provided in paragraph 9 hereof, shall be added to such amount and shall be paid to Standard by Consignee. In any case in which any such tax, duty, toll, impost, charge or other exaction is not part of the price at which Consignee is authorized to make sales hereunder, Consignee may add it to the price in making sales.

14. In the event Consignee fails in any way to use its best efforts to promote the sale of products consigned hereunder, or otherwise breaches any provision of this agreement, Standard shall give Consignee written notice of any such breach and Consignee shall have five (5) days within which to comply with the provisions breached. If said breach is not corrected within said five (5) day period, Standard may, at its option, subject to the provisions of Paragraph 20 hereof, terminate this agreement by giving Consignee twenty-five (25) days' notice thereof in writing.

In the event of any breach by Standard of any provision of this agreement, Consignee shall give Standard written notice of any such breach and Standard shall have five (5) days within which to comply with the provisions breached. If said breach is not corrected within said five-day period, Consignee may at its option terminate this agreement by giving Standard twenty-five (25) days' notice thereof in writing.

Any of the following shall be deemed a breach of this agreement upon which the party not affected thereby may at its option terminate this agreement immediately by giving the other party written notice of termination: the appointment of a receiver to take possession of all or substantially all of the assets of either party, whose appointment is not vacated within sixty (60) days; either party's becoming insolvent or committing any act of bankruptcy; either party's making a general assignment for the benefit of creditors, or any action taken or suffered by either party under any insolvency or bankruptcy act.

Waiver by either party of any breach of any provision hereof by the other party shall not be deemed to be a waiver of any subsequent or continuing breach or a waiver of the breach of any other provision.

15. Upon any termination of this agreement, or at the expiration of its term all of the products consigned hereunder that have not been sold shall be promptly redelivered to Standard, unless Consignee elects to purchase the same by written notice of such election given to Standard within ten (10) days after such termination or expiration. If Consignee elects to make such purchase, Consignee shall pay Standard as the price of such products an amount determined under the provisions of Exhibit "A" as though such products had been sold by Consignee upon the date of termination or expiration. If Consignee does not elect to make such purchase, the expense of redelivering such products to Standard shall be borne by Standard if the occasion for the redelivery is a termination by Standard under paragraph 4; but if the occasion for such redelivery is a termination of this agreement under paragraph 14, such expense shall be borne by the party whose breach resulted in termination by the other party. If the occasion for such redelivery is the expiration of the term of this agreement or a termination by Standard under paragraph 7 hereof, or any termination hereof not hereinbefore enumerated, such expense shall be borne by Consignee.

16. If and when any products consigned hereunder shall contain tetraethyl lead or any other anti-knock compound or compounds, this agreement shall be subject to all provisions contained in any agreement or agreements under which Standard is licensed to use such compound or compounds and to sell products containing the same. Consignee agrees to comply with such provisions in so far as they affect Consignee. If Consignee shall fail or refuse to so comply, Standard may suspend deliveries of the products affected by such license or licenses during the period of such failure or refusal.



17. This agreement shall extend to and be binding upon the successors and assigns of Standard and Consignee, provided, however, that no voluntary or involuntary assignment hereof shall be made by Consignee without the written consent of Standard, and no such assignment shall be made by Standard without the written consent of Consignee.

18. There shall be no obligation to deliver or to receive or use the said products when and while, and to the extent that, the receiving or using or manufacturing or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war, acts of any government (whether foreign or domestic, federal, State, county, or municipal,) partial or total interruption or loss or shortage of transportation facilities or supplies, shortage of products deliverable hereunder due to shortage in the supply of available crude oil or natural gas, or by other causes beyond the control of the parties, whether similar to the causes hereinbefore specified or not. It is Standard's present intention to prorate its available supply of product equitably among its purchasers (contract or otherwise) and its consignees whenever, due to any of such causes, Standard is unable to make deliveries to all such purchasers and consignees; however, Standard shall in no way be obligated thus to prorate its available supply, and its failure, partial or otherwise, to make deliveries to Consignee shall not be a breach of this contract, notwithstanding that Standard is making deliveries to others. If Standard is unable to make deliveries hereunder due to any of the foregoing causes, Consignee shall have the right to purchase from other sources such quantities of petroleum products as Standard is so unable to deliver during the time or times Standard's said disability may continue. Any such quantities of petroleum products so purchased by Consignee shall be accounted for when determining compliance by the parties with the quantity obligations hereinabove provided under Paragraph 7. Upon termination of the cause or causes for suspension of deliveries, performance hereunder shall be resumed, but nothing herein shall be construed as extending the term of this contract.

19. It is hereby mutually agreed that if at any time or from time to time during the life of this agreement Lee G. Powell, Clyde A. Perkins, or Dorothy M. Harris, hereinabove collectively called "Consignee," should severally, individually or jointly, as the case may be, desire to sell all or a major portion of his, her, or their interests in any or all property (either real or personal and including good will, accounts receivable and other intangible assets) then used by them, either jointly or severally, in the distribution or sale of said products hereunder, Standard shall have the prior right to purchase such interests. If they or any of them either jointly or severally receive from a third party an acceptable bona fide offer to buy such business or a major part thereof, the person or persons desiring to sell shall forthwith give Standard a written notice, together with a copy of such offer and shall furnish Standard with good and sufficient evidence, satisfactory to Standard, of the title to such interests proposed to be sold, and Standard shall have thirty (30) days from the receipt of said notice, written confirmation, and evidence to purchase the property involved at the terms of such offer or at such lesser terms as such person or persons and Standard may agree upon.

20. Lee G. Powell, Clyde A. Perkins, and Dorothy M. Harris, hereinabove collectively referred to as "Consignee," shall each be severally, individually and jointly bound by and liable for the performance of all of the terms, conditions and provisions of this agreement.

In the event the breach of any of the provisions of this agreement shall be occasioned by any one or two of the three persons herein collectively called "Consignee" and such breach shall not be corrected by such person or persons hereinafter called "Defaulting Party" within the time provided in paragraph 14 hereof, then Standard may, at its option, terminate this agreement in so far as such Defaulting Party is concerned by giving such Defaulting Party twenty-five (25) days' notice thereof in writing, but this agreement shall remain in full force and effect with respect to the person or persons not causing such breach, hereinafter called "Remaining Parties," provided such breach is corrected by such Remaining Parties; if it is possible for the Remaining Parties to correct such breach, within five (5) days after the time the Defaulting Party should have corrected such breach, and thereafter the Remaining Parties shall be deemed to constitute the persons herein collectively called "Consignee" excepting that the specified gallonage set forth in paragraph 7 hereof for the respective Products shall thereupon be reduced respectively in amounts equivalent to the respective quantity of Products delivered to Consignee hereunder sold by such Defaulting Party in the preceding calendar year, if a full calendar year has run under this agreement, or, if such breach

occurs prior to the running of a full calendar year, the specified gallonage set forth in paragraph 7 hereof for the respective Products shall thereupon be reduced respectively in amounts equivalent to the respective average monthly quantity of Products delivered to Consignee hereunder sold by such Defaulting Party during each period multiplied by twelve.

21. This agreement shall, as of the commencement date of the term hereof, terminate and supersede that certain Jobber Agreement between the parties hereto, dated March 9, 1945, as amended from time to time, and all other written agreements or oral agreements between the parties hereto, covering the sale and purchase of petroleum products or covering the consignment of petroleum products for sale in the area covered by this agreement.

22. All notices hereunder shall be in writing. Notices to Standard shall be addressed to it at 225 Bush Street, San Francisco, California. Notices to Consignee shall be addressed to it as follows:

Lee G. Powell  
Clyde A. Perkins  
Dorothy M. Harris  
3756 Northeast Alameda  
Portland, Oregon

Copies of any notice by Standard shall also be sent to Lee G. Powell, 6109 E. Duane Vista Dr., Vancouver, Washington, and Clyde A. Perkins, P. O. Box 59, Vancouver, Washington.

IN WITNESS WHEREOF, this agreement is hereby signed by the parties hereto.

STANDARD OIL COMPANY OF CALIFORNIA, Standard

By E. V. Burns

Consignee

By Lee G. Powell  
LEE G. POWELL

By Clyde A. Perkins  
CLYDE A. PERKINS

By Dorothy M. Harris  
DOROTHY M. HARRIS

KENTRITY "A"

Commissions to be paid by Standard to Consignee for selling products consigned under agreement dated April 6, 1953, shall be determined, and Consignee's payment to Standard of proceeds of Consignee's sales shall be made as follows:

For the purpose of simplifying the accounts to be maintained by Consignee, Standard agrees to accept, subject to the conditions hereinafter stated, accounting by Consignee as follows:

On or before Wednesday of each week, Consignee shall account for and pay over to Standard the proceeds of sales by Consignee during the previous calendar week as though sales of consigned products had been made during each week by Consignee in the amount and on the dates on which Consignee received replacement deliveries of consigned products; provided, however, Standard shall have the right on any notice to Consignee, immediately to have such accounting and payment at the time of each replacement delivery.

If Standard becomes dissatisfied with such method of accounting and payment, it may, upon sixty (60) days' written notice to Consignee, require Consignee to deliver to Standard statements and accounts and pay to Standard, at the time or times hereafter designated by Standard, on the basis of actual sales by Consignee.

Notwithstanding anything contained herein, it is agreed that in any case in which the price at which Consignee is authorized to sell a product has changed between the date of Consignee's actual sale and the date of the replacement delivery, and in any case in which Consignee makes a sale without ordering a replacement delivery, as provided in paragraph 6 of the annexed agreement, Consignee shall account and pay to Standard upon the actual sale based upon the applicable amount, as established below, in effect upon date of actual sale.

The amount at which Consignee shall account to Standard for products consigned hereunder shall be the applicable amount set forth below, and the commission for each sale shall be the difference between the price at which the sale is made and such applicable amount.

# I. Definitions:

## (a) Net Tank Truck Price:

In the case of consignment deliveries of all products hereunder, except kerosene, the net tank truck price shall be deemed to be Standard's lowest posted delivered by tank truck price for the particular product to consumers generally, excluding all taxes, in effect at the particular Standard supply point involved at time of consignment delivery.

## (b) For kerosene, the "Net Tank Truck Price" shall be Standard's posted 40-to-199 gallon delivered by tank truck price, excluding all taxes, for such product to consumers generally, in effect at the particular Standard supply point involved at time of consignment delivery.

II. In the case of consignment deliveries of all products hereunder, the applicable amount shall be the said net tank truck price for the particular product in effect at the Standard supply point involved, at time of consignment delivery, less the following adjustments:

## (a) Basic Adjustments:

First Brand Gasoline	4.00¢ per gallon
Second Brand Gasoline	3.50¢ per gallon
Kerosene	*5.50¢ per gallon
Stove Oil	3.25¢ per gallon
Diesel Fuel	2.55¢ per gallon
Furnace Oil	2.55¢ per gallon
Auto. Diesel Fuel	2.00¢ per gallon

\*Subject to change with Standard's posted Jobber's Schedule.

(b) The basic adjustments shown in II (a) above may be subject to adjustment for each contract year, from and after the contract year ending August 31, 1955, by the following:

(1) During a four-months' period from May 1, 1955, to August 31, 1955, and during a like four-months' period of each contract year during the remaining term of this agreement, Consignee shall have the right to request a meeting with Standard to discuss additional adjustments over and above such basic adjustments, by giving Standard at least fifteen (15) days' written notice prior to the commencement of the month of May involved. Standard agrees that within sixty (60) days after receipt of any such notice, it will meet with Consignee, at a time or times mutually agreed upon, to discuss such additional adjustments.

(2) If, after any such request, no agreement as to additional adjustments to be applicable to the ensuing contract year can be reached by the end of the four-months' period involved, then, notwithstanding paragraph 4 of said agreement, Consignee shall have the right to terminate said agreement by giving five (5) months' written notice at any time within thirty (30) days after the end of such four months' period. It is understood further that in the event of no agreement at any such negotiation meeting hereunder, additional adjustments for the ensuing contract year or up to the date of termination (as the case may be) shall be based upon the following:

(i) Unless Standard offers additional adjustments for the ensuing contract year, no additional adjustments shall be in effect for the ensuing contract year.

(ii) If Standard offers any additional adjustments during the four-months' negotiation period involved, then the highest additional adjustment offered and confirmed in writing by Standard to Consignee during such four-months' period shall be in effect.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) above, if Consignee exercises its right to terminate this agreement within the thirty-day period provided above, the additional adjustments, if any, in effect on the last day of the preceding contract year, shall be applicable to all consignment deliveries during the remaining six (6) months' term of said contract.

(3) If Consignee does not request a meeting for the purpose of negotiating additional adjustments as set forth in (b) above, then no additional adjustments over and above such basic adjustments shall be in effect for the contract year involved.

If Consignee does not exercise its right to request an additional adjustment meeting hereunder, or if Consignee does not exercise any right it may have to terminate hereunder within the time set forth, negotiations for any ensuing contract year thereafter shall be carried on in the same manner as above set forth.

### III. Prices

Standard shall not be obligated to make deliveries of the particular product involved to Consignee hereunder while the applicable amount, as determined hereunder, after application of all adjustments for such product at the particular supply point involved under Paragraph II above, and any other adjustments, is less than the following:

Willbridge Ex All Taxes - Per Gallon	
First Brand Gasoline	11.00¢
Second Brand Gasoline	9.50¢
Kerosene	10.00¢
Stove Oil	8.25¢
Auto. Diesel Fuel	9.45¢
Diesel Fuel/Purnace Oil	7.45¢



## Plaintiff's Exhibit No. 17

Exhibit	14
Case	331-59
Date	
Rptr	
Clerk	

Exhibit	16-81
Case	361-57
Date	
Rptr	
Clerk	

Exhibit	17
Case	369-57
Date	
Rptr	
Clerk	

FOR VALUE RECEIVED W. M. Lennington, I. Allen Perkins, PERKINS & LENNINGTON, a partnership, and CHAMPION STATIONS, a partnership, hereby assign and set over to CLYDE A. PERKINS any and all claim, right, title or interest, held by said parties against Standard Oil Company of California, its subsidiaries or affiliates and specifically authorize said Clyde A. Perkins to file such suits, actions or proceedings which he may consider advisable for this purpose, in order to recover for any such claims or other interests.

W. M. Lennington  
W. M. LENNINGTON  
I. Allen Perkins  
I. ALLEN PERKINS  
PERKINS & LENNINGTON, a partnership  
partner  
partner

PERKINS & LENNINGTON CHAMPION STATIONS  
A PARTNERSHIP  
partner  
partner

WITNESS

W. M. Lennington  
I. Allen Perkins



## Plaintiff's Exhibit No. 17-A

Plf	Exhibit	17A
Case	389-57	Rptr
Date		Clerk

Plf	Exhibit	14A
Case	331-57	Rptr
Date		Clerk

FOR VALUE RECEIVED Perkins Oil Company of Washington, a corporation, hereby assigns and sets over to Clyde A. Perkins any and all claim, right, title or interest, held by said corporations against Standard Oil Company of California, its subsidiaries or affiliates and specifically authorize said Clyde A. Perkins to file such suits, actions or proceedings which he may consider advisable for this purpose, in order to recover for any such claims or other interests.

PERKINS OIL COMPANY OF WASHINGTON

*Clyde A. Perkins*

(CORPORATE SEAL)

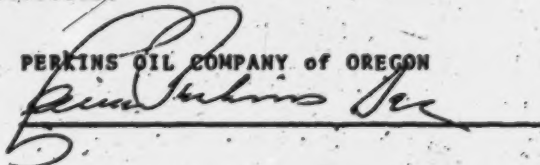
## Plaintiff's Exhibit No. 17-B

Exhibit	14B
Case	331-59
Rptr	Reed
Date	
Clerk	

Exhibit	17B
Case	369-59
Rptr	Reed
Date	
Clerk	

FOR VALUE RECEIVED Perkins Oil Company of Oregon, an Oregon corporation, hereby assigns and sets over to Clyde A. Perkins any and all claim, right, title or interest, held by said corporation against Standard Oil Company of California, its subsidiaries or affiliates and specifically authorize said Clyde A. Perkins to file such suits, actions or proceedings which he may consider advisable for this purpose, in order to recover for any such claims or other interests.

PERKINS OIL COMPANY OF OREGON



(CORPORATE SEAL)

## Plaintiff's Exhibit No. 23-H

23

RECEIVED  
JAN 10 1964U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

TO : DIRECTOR, FBI  
FROM : SAC, NEW YORK  
SUBJECT: [Illegible]

[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a memorandum or report detailing an investigation.]

Very truly yours,  
[Signature]



and correct, subject, however, to the possibility of inadvertent omissions or errors in the answer as given and subject to correction of any such omissions or errors.

Interrogatory No. 15 of plaintiff's first set asked in substance for the quantities of petroleum products delivered by Standard to jobbers in Oregon and Washington and the prices or net amounts paid over to Standard by such jobbers for such products. Standard answered such interrogatory. The accompanying affidavit of J. P. Bowman recited:

"However, the inquiry has required extensive investigation, conducted by numerous executives and other employees, of files and records located in company's home offices in San Francisco and in other of its offices in California, Oregon and Washington. While the answers, therefore, are believed to be correct, there is a possibility of inadvertent omissions or errors and the answers are given subject to correction of any such omissions or errors."

A subsequent review of Standard's records required changes to be made in said answer in various respects. Accordingly, several amendments to said answer were filed with the result that the complete answer of Standard must be ascertained from a series of documents on file herein which in part supplement and in part cancel the original answer and subsequent amendments. It is believed that a consolidated answer, superseding all prior answers of Standard to plaintiff's Interrogatory No. 15 (first set), will present the information sought in a more usable, expeditious and correct form.

Since the filing of the last amendment to said interrogatory Standard employees have again reviewed Standard's records and have found some minor changes or additions necessary to bring the interrogatory answer in accord with our present state of knowledge of the matters of fact required by said Interrogatory No. 15. These changes in substance are as follows:



1. Schedule B attached reflects freight allowance on all products; it further reflects a postponement of a change in commissions on stove oil, diesel oil, diesel fuel and furnace oil from 9/1/56 to 9/30/56; also, there has been added, for the period 1/15/57 through 12/31/57, an additional commission of .1¢ on stove oil and furnace oil applicable to withdrawals from Willbridge destined for the Portland metropolitan area, including Vancouver, and a similar additional commission covering diesel fuel only for the period from 1/15/57 to 6/15/57; finally, Schedule B reflects the postponement of a posted price increase by Standard of .3¢ on oil refined petroleum products other than gasoline for the period from 6/15/57 to 6/21/57.

2. The amount of additional commissions stated in note 6 of Schedule F has been changed from \$3,235.51 to \$3,327.62.

3. Notes 3, 4 and 5 of Schedule K have been added.

4. Schedule J reflects four instances in which an increase in Standard's posted price of one or more of Standard's products was postponed. Further, a change in the net proceeds payable reflected on said Schedule J heretofore listed as having been effective 5/1/56 has been corrected to 7/1/56.

5. Schedule G reflects an additional commission of .1¢ on stove oil, furnace oil and diesel fuel listed at Willbridge.

6. Note 1 of Schedule F has been added although documents reflecting the matters set forth therein have heretofore been produced for plaintiff's inspection.

The other changes over prior answers now on file are additions of, or changes in, explanatory notes.

John M. McDonald

JOHN M. McDONALD

Subscribed and sworn to before me this 28th day of October,

1958.

Phyllis M. Thorne

Phyllis M. Thorne  
Notary Public for Oregon

My commission expires 8-9-67

Wayne Hilliard  
Kosner, Young, McCulloch & DeZendorf  
800 Pacific Building  
Portland 4, Oregon

Attorneys for Defendant Standard  
Oil Company of California

sent - Feb 01-29, 1963

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Pick

CLYDE PERKINS,

Plaintiff,

v.

Civil 339-59

STANDARD OIL COMPANY OF  
CALIFORNIA, a corporation,  
HARRIS OIL COMPANY, a  
corporation, HARRIS  
DISTRIBUTING COMPANY, a  
corporation, and L. F. POSELL,

Defendants.

COMPLAINT FOR INJURY OF DEFENDANT  
STANDARD OIL COMPANY OF CALIFORNIA  
IN VIOLATION OF 15 U.S.C.  
PLAINTIFF'S FIRST SET OF  
DECLARATIONS

Definitions:

As used herein, (1) the term "refined petroleum products" means automotive gasoline, kerosene, automotive diesel oil, diesel fuel, stove oil and furnace oil. (2) All figures designated as "net price" or "net amount accounted for" are exclusive of the applicable state and federal motor vehicle fuel taxes.

Summary of Schedules Attached:

SCHEDULE A, attached hereto, reflects the monthly quantities of refined petroleum products delivered by Standard to Clipper Oil Company pursuant to written contract for each month during the years 1955, 1956 and 1957.

SCHEDULES B 1 and B 2, attached hereto, reflect the net amount accounted for by Clipper Oil Company to Standard for each gallon of refined petroleum product delivered by Standard to Clipper at Willbridge Oregon, and Richmond Beach, Washington, during the period from March 1, 1955, to December 2, 1957.

SCHEDULE C, attached hereto, reflects all those additional commissions which were extended by Standard to Clipper Oil Company on the sale by Clipper of Standard's refined petroleum products and are not reflected in the preceding SCHEDULE B.

SCHEDULE D, attached hereto, reflects the monthly quantities of refined petroleum products delivered by Standard to Clyde A. Perkins, Lee C. Powell, Harris Distributing Company and Harris Oil Company pursuant to written contract for each month during the years 1955, 1956 and 1957.

SCHEDULE E, attached hereto, reflects the net amount accounted for by Lee C. Powell, Clyde A. Perkins, Harris Distributing Company and Harris Oil Company to Standard for each gallon of refined petroleum product delivered by Standard to Perkins, Powell and Harris at Willbridge, Oregon, and destined for Portland, Oregon, Metropolitan Carrier Tariff Zone No. 3, during the period from March 1, 1955, to December 2, 1957.

Page

SCHEDULE F, attached hereto, reflects all those additional commissions which were extended by Standard to Clyde A. Perkins, Lee C. Powell, Harris Distributing Company and Harris Oil Company on the sale by Perkins, Powell and Harris of Standard's refined petroleum products and are not reflected in the preceding SCHEDULE E.

SCHEDULE G, attached hereto, reflects the monthly quantities of refined petroleum products sold by Standard to Signal Oil and Gas Company pursuant to written contract and delivered to Signal Oil and Gas Company at Standard's terminals or plants at Willbridge, Oregon, and Point Wells and Seattle, Washington, for each month during the years 1955, 1956 and 1957.

SCHEDULES H 1 and H 2, attached hereto, reflect the net price per gallon, after all allowances and adjustments, paid by Signal Oil and Gas Company to Standard for the refined petroleum products delivered by Standard to Signal Oil and Gas Company at Willbridge, Oregon, and Point Wells and Seattle, Washington, during the period from March 1, 1955, to December 2, 1957.

SCHEDULE I, attached hereto, reflects the monthly quantities of refined petroleum products delivered by Standard to Merritt Truax, W. L. Peavey and Truax Oil Company pursuant to written contract for each month during the years 1955, 1956 and 1957.

SCHEDULE J, attached hereto, reflects the net amount accounted for by Merritt Truax, W. L. Peavey and Truax Oil Company to Standard for each gallon of refined petroleum product delivered by Standard to Merritt Truax, W. L. Peavey and Truax Oil Company at Willbridge, Oregon, destined for Willbridge, Oregon, during the period from March 1, 1955, to December 2, 1957.

SCHEDULE K, attached hereto, reflects all those additional commissions which were extended by Standard to Merritt Truax, W. L. Peavey and Truax Oil Company on the sale by them of Standard's products and are not reflected in the preceding SCHEDULE J.

SCHEDULE L, attached hereto, reflects the monthly quantities of refined petroleum products delivered by Standard to Trues Oil Company pursuant to written contract for each month during the years 1955, 1956 and 1957.

SCHEDULE M, attached hereto, reflects the net amount per gallon accounted for by Trues Oil Company to Standard for each gallon of refined petroleum product delivered by Standard to Trues Oil Company at Spokane, Washington, during the period from March 1, 1955, to December 2, 1957.

SCHEDULE N, attached hereto, reflects the monthly quantities of refined petroleum products delivered by Standard to Washington Co-operative Farmers Association pursuant to written contract for each month during the years 1955, 1956 and 1957.

SCHEDULE O, attached hereto, reflects the net amount accounted for by Washington Co-operative Farmers Association for each gallon of refined petroleum product delivered by Standard to Washington Co-operative Farmers Association during the period from March 1, 1955, to December 2, 1957.

SCHEDULE P, attached hereto, reflects all those additional commissions or payments which were extended by Standard to Washington Co-operative Farmers Association and are not reflected in the preceding SCHEDULE O.



SCHEDULE AQUANTITIES OF REFINED PETROLEUM PRODUCTS  
DELIVERED TO CLIPPER OIL COMPANY

	<u>Motor Gasoline</u> <u>(gallons)</u>	<u>Kerosene</u> <u>(gals)</u>	<u>Auto/Diesel</u> <u>(gals)</u>	<u>Stove Oil</u>	<u>Diesel Fuel</u>	<u>Furnace Oil</u>
1955	232,591	-	-	-	-	-
	222,999	-	-	-	-	-
	217,191	-	-	-	-	-
	719,624	-	-	-	-	-
	192,042	-	-	-	-	-
	192,305	-	-	-	-	-
	192,899	-	-	-	-	-
	249,829	-	-	-	-	-
	195,946	-	-	-	-	-
	179,203	-	-	-	-	-
	184,402	-	-	-	-	-
	165,528	-	-	-	-	-
1956	171,235	-	-	-	-	-
	163,879	-	-	-	-	-
	186,511	-	-	-	-	-
	159,717	-	-	-	-	-
	193,090	-	-	-	-	-
	188,725	-	-	-	-	-
	159,230	-	-	-	-	-
	176,450	-	-	-	-	-
	146,545	-	-	-	-	-
	147,415	-	-	-	-	-
	153,670	-	-	-	-	-
	129,265	-	-	-	-	-
1957	126,625	-	-	-	-	-
	116,745	-	-	-	-	-
	141,290	-	-	-	-	-
	145,735	-	-	-	-	-
	145,470	-	-	-	-	-
	134,339	-	-	-	-	-
	156,477	-	-	-	-	-
	131,755	-	-	-	-	-
	127,800	-	-	-	-	-
	145,645	-	-	-	-	-
	176,285	-	-	-	-	-
	147,740	-	-	-	-	-

SCHEDULE B1

NET AMOUNT ACCOUNTED FOR BY CLIPPER OIL COMPANY TO STANDARD PER GALLON FOR GASOLINE  
DELIVERED AT SEATTLE OR RICHMOND BEACH, WASHINGTON

	<u>Premium</u>	<u>Regular</u>
3-1 to 4-21-55	\$ .1410	\$ .1210
4-22 to 6-28-55	.1440	.1240
6-29 to 12-31-55	.1500	.1280
1-1 to 2-6-56	.1500	.1305
2-7 to 2-29-56	.1530	.1305
3-1 to 6-30-56	.1550	.1325
7-1 to 12-31-56	.1550	.1325
1-1-57 to 1-18-57	.1550	.1325
1-19 to 3-31-57	.1600	.1375
4-1 to 4-2-57	.1600	.1375
4-3 to 6-23-57	.1640	.1395
6-24 to 12-31-57	.1670	.1425

SCHEDULE B2

NET AMOUNT ACCOUNTED FOR BY CLIPPER OIL COMPANY TO STANDARD PER GALLON FOR GASOLINE

DELIVERED AT WILBRIDGE

	<u>Premium</u>	<u>Regular</u>
3-1 to 4-26-55	\$ .1410	\$ .1210
4-27 to 7-25-55	.1440	.1240
7-26 to 11-15-55	.1490	.1270
11-16 to 12-31-55	.1490	.1295
1-1 to 2-6-56	.1440	.1270
2-7 to 2-29-56	.1470	.1270
3-1 to 6-30-56	.1490	.1290
7-1 to 12-31-56	.1490	.1290
1-1-57 to 1-18-57	.1490	.1290
1-19 to 3-31-57	.1540	.1340
4-1 to 4-2-57	.1540	.1340
4-3 to 6-23-57	.1580	.1360
6-24 to 12-31-57	.1610	.1390

Explanatory Note to SCHEDULES B-1 and B-2

In addition to deliveries at Willbridge, Oregon, and Richmond Beach, Washington, Clipper Oil Company also lifted products at Tacoma, Washington, for delivery to Tacoma Yellow Cab Company. Such deliveries were made by Standard's trucks for Clipper Oil Company's account. For the amount for which Clipper accounted to Standard for such deliveries, add .5¢ to the amount shown on SCHEDULE B-1, covering deliveries at Richmond Beach.

SCHEDULE CADDITIONAL COMMISSIONS EXTENDED BY  
STANDARD TO CLIPPER OIL COMPANY

On the dates indicated herein, Standard extended to Clipper Oil Company the following additional commissions not reflected in SCHEDULES B 1 and B 2:

1. On January 13, 1956, Standard paid by check to Clipper as additional commission on gasoline sales in the State of Washington during 1956 the amount of \$2,809.74, computed at the rate of \$.005 per gallon on premium gasoline and \$.0025 per gallon on regular gasoline.

2. On January 8, 1956, Standard paid by check to Clipper as additional commission on gasoline sales in the State of Washington during 1957 the amount of \$2,454.26, computed at the rate of \$.005 per gallon on premium gasoline and \$.0025 on regular gasoline.

3. During the years 1956 and 1957, Standard paid or credited to Clipper Oil Company additional commissions on sales of gasoline to service station operators in Seattle and Portland because of depressed retail prices in the following amounts: "

April 11, 1956	\$3,000.00
September 17, 1957	2,433.10
November 5, 1957	1,750.00
December 3, 1957	2,000.00



QUANTITIES OF REFINED PETROLEUM PRODUCTS  
DELIVERED TO PERKINS, POWELL AND HARRIS

	<u>Motor Gasoline</u> <u>(gallons)</u>	<u>Kerosene</u> <u>(gals)</u>	<u>Auto/Diesol</u> <u>(gals)</u>	<u>Stove Oil</u>	<u>Diesel Fuel</u>	<u>Furnace Oil</u>
Jan. 1955	1,083,464	6,731	5,843	698,006	453,897	1,190,362
Feb.	1,046,867	2,963	7,166	594,443	404,548	867,787
Mar.	1,084,100	2,743	5,691	670,822	424,673	1,070,625
Apr.	1,123,795	2,860	4,939	463,635	357,329	787,220
May	689,952	2,772	8,936	194,691	196,204	434,034
June	1,395,015	108	10,945	108,071	129,191	249,050
July	1,167,060	3,211	6,707	65,075	123,001	195,707
Aug.	1,508,835	214	8,572	61,681	204,004	145,518
Sept.	1,495,409	2,765	13,585	256,162	434,687	450,362
Oct.	1,419,946	1,873	3,910	416,734	358,069	565,827
Nov.	1,188,119	3,046	7,134	736,294	530,277	1,021,609
Dec.	1,293,449	2,036	1,220	746,385	613,299	1,180,798
Jan. 1956	1,072,495	3,623	3,762	779,364	660,630	1,214,119
Feb.	997,289	3,454	2,965	780,402	646,294	1,414,412
Mar.	1,216,041	1,380	7,552	510,585	482,857	956,031
Apr.	1,376,958	2,598	6,410	229,635	292,899	445,300
May	1,436,773	110	6,232	126,375	219,916	263,634
June	1,671,235	1,143	2,520	89,978	227,663	222,289
July	1,420,513	1,115	10,538	34,234	190,756	121,959
Aug.	1,617,242	377	7,672	54,698	258,311	190,319
Sept.	1,366,790	53	3,046	137,021	266,731	353,272
Oct.	1,393,685	2,530	7,626	376,309	379,376	585,152
Nov.	1,371,439	1,697	3,864	536,304	512,739	1,000,237
Dec.	1,119,864	1,652	2,970	539,808	475,961	990,882
Jan. 1957	1,184,627	4,955	5,518	768,633	900,400	1,527,102
Feb.	1,123,636	318	3,046	450,976	613,465	900,714
Mar.	1,271,487	2,638	-	360,658	221,792	641,747
Apr.	1,380,695	106	2,701	241,833	420,112	412,686
May	1,487,306	1,544	2,420	98,538	254,224	267,652
June	1,347,971	583	3,640	57,621	240,231	193,235
July	1,502,404	957	5,982	23,523	157,586	107,668
Aug.	1,458,758	1,485	-	37,309	143,627	172,793
Sept.	1,241,390	424	1,901	52,904	128,523	247,672
Oct.	1,265,716	1,801	2,021	298,710	(127,320)	1,061,318
Nov.	1,169,199	2,615	1,591	345,108	( 8,118)	1,076,584
Dec.	871,630	850	-	316,300	2,021	1,207,688

SCHEDULE E

NET AMOUNT ACCOUNTED FOR BY PERKINS, POWELL AND HARRIS  
PER GALLON ON PRODUCTS DELIVERED AT WILABRIDGE, ORE.,  
DESTINED FOR PORTLAND MOTOR CARRIER TARIFF ZONE 3

<u>Date</u>	<u>1st Brand</u>	<u>2nd Brand</u>	<u>Kerosene</u>	<u>Auto D/F</u>	<u>Stove Oil</u>	<u>Diesel Fuel</u>	<u>Furnace Oil</u>
3-1-55 to 4-21-55	14.27	12.27	15.47	12.7125	10.6625	9.8625	9.8625
4-22-55 to 4-30-55	14.57 ✓	12.57	15.47	13.0125	10.9625	10.1625	10.1625
5-1-55 to 7-10-55	14.07	12.32	15.27	12.7125	10.7125	9.9625	9.9625
7-11-55 to 1-31-56	14.57	12.62	15.27	12.7125	10.7125	9.9625	9.9625
2-1-56 to 2-6-56	14.07	12.37	15.27	12.7125	10.2125	9.4625	9.4625
2-7-56 to 2-27-56	14.37	12.37	15.27	12.7125	10.2125	9.4625	9.4625
2-28-56 to 6-7-56	14.57	12.57	15.47	12.9125	10.4125	9.6625	9.6625
6-8-56 to 6-30-56	14.57	12.57	15.67	12.9125	10.4125	9.6625	9.6625
7-1-56 to 9-30-56	14.57	12.57	15.67	12.9125	10.6625	9.8625	9.8625
10-1-56 to 11-21-56	14.57	12.57	15.67	12.9125	10.3625	9.6125	9.6125
11-22-56 to 11-30-56	14.57	12.57	16.17	13.5125	10.9625	10.2125	10.2125
12-1-56 to 1-16-57	14.57	12.57	16.17	13.5125	11.3625	10.6125	10.6125
1-17-57 only	15.07	13.07	16.67	14.0125	11.8625	11.1125	11.1125
1-18-57 to 4-2-57	15.07	13.07	16.67	14.0125	11.7625	11.0125	11.0125
4-3-57 to 6-17-57	15.47	13.27	16.67	14.0125	11.7625	11.0125	11.0125
6-18-57 to 6-21-57	15.47	13.27	16.67	14.0125	11.6125	11.0125	10.8625
6-22-57 to 8-31-57	15.77	13.57	16.97	14.3125	11.9125	11.3125	11.1625
9-1-57 to 12/2/57	15.77	13.57	16.97	14.3125	11.8125	11.3125	11.0625

Explanatory Notes to SCHEDULE E

1. During the period from March 2, 1955, to December 2, 1957, Perkins, Powell and Harris accounted to Standard for Standard's refined petroleum products sold by them on the basis of a per-gallon amount computed by taking Standard's posted 400 gallon and over tank truck price at the destination point to which Perkins, Powell and Harris shipped the particular product involved, less the consignment commissions provided for at the particular time, which commissions included an amount equal to the lowest published motor truck and trailer carrier tariff from the point of delivery to the point of destination; whenever a common carrier was used, the commission included also an amount equal to the federal transportation tax applicable to such tariff rate, except where the products were destined for a point within the zone in which the posted price established for the point of delivery prevailed (Zero differential zone).

For this reason, the amount accounted for by Perkins, Powell and Harris for products received at Standard's Willbridge terminal or at any other supply point varied with the destination of each shipment.

SCHEDULE E reflects the figures applicable to product delivered at Standard's Willbridge terminal and destined for any point within Carrier Tariff Zone No. 3 in the Portland metropolitan area. The commissions extended under these particular circumstances did not include an amount equal to any federal transportation tax.

2. The figures for stove oil, furnace oil and diesel oil sold as furnace oil set out in SCHEDULE E for the period from 9/1/57 to 12/2/57 include the advertising allowance extended to Perkins, Powell and Harris by Standard in the amount of .14 per gallon.

SCHEDULE FADDITIONAL COMMISSIONS EXTENDED BY STANDARD  
TO PERKINS, POWELL AND HARRIS

During the period from March 2, 1955, to and including December 2, 1957, Standard extended to Perkins, Powell and Harris the following additional commissions not reflected in the preceding SCHEDULE E:

1. Between 3/1/55 and 12/31/55 Standard paid or credited to Perkins, Powell and Harris additional commissions on sales of motor gasoline to service station operators in localities where the retail price level was depressed. The amount of such additional commissions was \$1,337.46.

2. Additional commissions were extended by Standard to Perkins, Powell and Harris during the periods indicated on sales to the following named accounts on the refined petroleum products indicated:

(a) Griffith & Marrell, from 11/21/55 to 2/2/56, motor gasoline, .25¢ (total \$368.75); stove oil, .20¢ (total \$205.27); diesel fuel, .10¢ (total \$186.50).

(b) San Crenadas, from 9/10/57 through 11/13/57, 1¢ on all diesel fuel resold by San Crenadas to Crown Zellerbach (total \$253.52).

(c) Low Copping, from 12/16/55 to 1/24/56, motor gasoline, .25¢ (total \$123.70).

3. On or about June 29, 1956, Standard paid or credited to Perkins, Powell and Harris the amount of \$813.69 on sales to R & H Champion Wheel Service Company, Washington, D.C. of additional commissions because of depressed retail prices during the periods 4/29/55 to 5/13/55, 8/13/55 to 9/12/55 and 10/5/55 to 12/20/55.

4. On or about November 15, 1957, Standard paid or credited to Perkins, Powell and Harris the amount of \$4,000.00 as additional commissions on sales to Don Fraser during the period from 8/1/57 to 11/30/57.

5. On or about February 3, 1956, Standard paid or credited to Perkins, Powell and Harris the sum of \$5,500.00 as additional commissions on sales of refined petroleum products made during the period 1/16/56 to 1/31/56 because of unusual competitive price activities other than at the retail level.

6. During October and November, 1956, Standard paid or credited to Perkins, Powell and Harris additional commissions computed at the rate of .25¢ per gallon on stove oil and .20¢ per gallon on diesel and furnace oil for the period from 7/1/56 through 9/30/56. The total of such payments or credits was \$3,327.62.



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SCHEDULE G  
 QUANTITIES OF REFINED PETROLEUM PRODUCTS  
 DELIVERED TO SIGNAL OIL & GAS COMPANY AT  
WILLBRIDGE, OREGON, AND RICHMOND BEACH AND  
SEATTLE, WASHINGTON

	<u>Motor Gasoline</u> <u>(gallons)</u>	<u>Kerosene</u> <u>(gals)</u>	<u>Auto/Diesel</u> <u>(gals)</u>	<u>Stove Oil</u>	<u>Diesel Fuel</u>	<u>Furnace Oil</u>
Jan. 1955	235,640	-	-	-	-	-
Feb.	411,042	-	-	-	-	-
Mar.	470,117	-	-	-	-	-
Apr.	516,206	-	-	-	-	-
May	444,724	-	-	-	-	-
June	516,943	-	-	-	-	-
July	602,535	-	-	-	-	-
Aug.	313,316	-	-	-	-	-
Sept.	397,357	-	-	-	-	-
Oct.	584,525	-	-	-	-	-
Nov.	709,725	-	-	-	-	-
Dec.	403,557	-	-	-	-	-
Jan. 1956	264,601	-	-	-	-	-
Feb.	338,004	-	-	-	-	-
Mar.	447,913	-	-	-	-	-
Apr.	467,857	-	-	-	-	-
May	558,664	-	-	-	-	-
June	485,279	-	-	-	-	-
July	457,460	-	-	-	-	-
Aug.	562,299	-	-	-	-	-
Sept.	451,889	-	-	-	-	-
Oct.	552,829	-	-	-	-	-
Nov.	544,716	-	-	-	-	-
Dec.	532,218	-	-	-	-	-
Jan. 1957	557,041	-	-	-	-	-
Feb.	615,824	-	-	-	-	-
Mar.	775,822	-	-	-	-	-
Apr.	791,914	-	-	-	-	-
May	835,925	-	-	-	-	-
June	781,804	-	-	-	-	-
July	800,465	-	-	-	-	-
Aug.	669,527	-	-	-	-	-
Sept.	588,946	-	-	-	-	-
Oct.	684,915	-	-	-	-	-
Nov.	598,534	-	-	-	-	-
Dec.	640,189	-	-	-	-	-

SCHEDULE H1

SIGNAL OIL & GAS COMPANY - NET PRICE PER GALLON GASOLINE PAID TO STANDARD

P.O.B. WILLBRIDGE, OREGON

	<u>Echyl</u>	<u>Regular</u>
8-1-56 to 12-31-56 Inc.	\$ .1425	\$ .1225
1-1-57 to 1-16-57 Inc.	.1424	.1224
1-17-57 to 3-25-57 Inc.	.1474	.1274
3-26-57 to 3-31-57 Inc.	.1474	.1274
4-1-57 to 4-2-57 Inc.	.1472	.1272
4-3-57 to 6-17-57 Inc.	.1512	.1292
6-18-57 to 6-23-57 Inc.	.1512	.1292
6-24-57 to 6-30-57 Inc.	.1542	.1322
7-1-57 to 11-30-57 Inc.	.1535	.1315

SCHEDULE H2

SIGNAL OIL & GAS COMPANY - NET PRICE PER GALLON GASOLINE PAID TO STANDARD  
F.O.B. SEATTLE AND RICHMOND BEACH, WASHINGTON

	<u>Ethyl</u>	<u>Regular</u>
3-1-55 to 4-21-55 inc.	\$ .1360	\$ .1210
4-22-55 to 6-28-55 inc.		.1240
6-29-55 to 1-11-56 inc.	.1390	.1280
1-12-56 to 2-5-56 inc.	.1450	.1280
2-6-56 to 2-28-56 inc.	.1480	.1280
3-1-56 to 3-17-56 inc.	.1428	.1228
3-18-56 to 6-30-56 inc.	.1448	.1248
7-1-56 to 12-31-56 inc.	.1435	.1235
1-1-57 to 1-16-57 inc.	.1434	.1234
1-17-57 to 3-25-57 inc.	.1484	.1284
3-26-57 to 3-31-57 inc.	.1484	.1284
4-1-57 to 4-2-57 inc.	.1482	.1282
4-3-57 to 6-17-57 inc.	.1522	.1302
6-18-57 to 6-23-57 inc.	.1522	.1302
6-24-57 to 6-30-57 inc.	.1552	.1332
7-1-57 to 11-30-57 inc.	.1545	.1325

## Plaintiff's Exhibit No. 40

Plaintiff's Exhibit - 5/1	
Case - 367-57	Rptr. <i>Reed</i>
Date	Clerk



Office and Display Room at North End of Perkins Oil Co. Bldg.  
6229 HIGHWAY NO. 99 • VANCOUVER, WASHINGTON

February 3, 1936

L. Allen Perkins  
Perkins Oil Company  
6025 North Highway 99  
P. O. Box 59  
Vancouver, Washington

Dear Allen:

I have just been notified by one of my best service station dealers, Al Hunsicker's Service at Garrison and Mill Plain Road, that unless I give him a better price on his gasoline, he is going to change suppliers. At present, this station does a gallonage of approximately 28,000 gallons per month and has truck and trailer storage. He advised me that he has been offered 3¢ off on both regular and ethyl, and I am sure that you realize that the margin I have is inadequate to meet such competition.

Several of my other outlets have shown a considerable loss in gallonage, which leads me to believe, although I cannot prove it, that my competitors are bottlegging cheap gasoline to these units.

For your information, the Petroleum Products Company of Portland has been trying to sell me products and has offered me the following discounts, delivered at our storage in Vancouver:

Ethyl	.05	per gallon
Regular	.045	per gallon
Stove Oil	.041	per gallon
Diesel	.0336	per gallon.

The Petroleum Products Company advises me that their diesel and stove oil is supplied to them by General Petroleum, and their gasoline is supplied to them by Union Oil Company.

In order to prove to you that I can buy gasoline and burner oils, even from a Vancouver competitor, at a price considerably cheaper than I pay you, I am enclosing three invoices of products that I purchased from the Pomco Oil Company in Vancouver. It seems rather peculiar to me that a small distributor like Pomco Oil Company, which I believe does approximately half the gallonage that I do, can sell me at these prices and still make a profit. Incidentally, Mr. Wood of Pomco is quite anxious to sell me all the gasoline, stove and diesel that I want to buy.

L. Allen Perkins  
Vancouver, Washington

February 3, 1936  
— Page 2 —

I might also add that in order to retain our business with the Portco Corporation, we had to give them a 10% discount off tank wagon on gasoline and diesel. They explained to me that both their company and the Union Oil Company are members of the National Rent Packers Association, and because of this the Union Oil Company gives them a 10% rebate, which I was required to meet in order to preserve the business.

In line with your repeated requests, we have held our established retail prices on gasoline in our Vancouver and Clark County outlets, and have influenced our competition to do likewise. Across the river in the Portland area major oil companies are consistently underselling us 2¢ to 3¢ per gallon. As a result, our gasoline gallonage over the last year and a half has decreased approximately 35 percent.

Unless you can give me some relief immediately, I am going to be forced to buy products from outside sources. Allen, I hate to do this, as we have always been very close, and our business has been 100 percent with you over a period of years. Please let me know immediately if you can give me some help.

Yours very truly,

Donald W. Fraser

THE DON FRASER COMPANY



## Plaintiff's Exhibit No. 82-B

Exhibit	82 B
Case	364-59
Repr	
Clerk	

Schedule A-1

CLYDE PERKINS v. STANDARD OIL COMPANY OF CALIFORNIAPrice Differential on Gallons Sold

<u>Ethyl Gasoline</u>	<u>Gallons Sold</u>
March 6, 1955 to September 30, 1955.....	1,502,404
October 1, 1955 to September 30, 1956.....	2,342,894
October 1, 1956 to September 30, 1957.....	2,100,155
October 1, 1957 to November 30, 1957.....	316,894
Total.....	6,262,347
Less gallons purchased from other suppliers - see below.....	408,031
	<u>5,854,316</u>

Price differential per gallon -.6877¢ - Schedule A-2

Amount of price differential on gallons sold - Ethyl.... \$ 40,260

Regular Gasoline

March 6, 1955 to September 30, 1955.....	3,015,920
October 1, 1955 to September 30, 1956.....	4,996,550
October 1, 1956 to September 30, 1957.....	4,893,121
October 1, 1957 to November 30, 1957.....	807,416
Total.....	13,713,007
Less gallons purchased from other suppliers - see below.....	893,503
	<u>12,819,504</u>

Price differential per gallon -.6877¢ - Schedule A-2

Amount of price differential on gallons sold - Regular.. 88,160

Total price differential on gallons sold..... \$ 128,420

Purchases from suppliers other than Standard Oil Company during the period:

Total - gallons.....	<u>1,301,534</u>
Ethyl - 6,262,347/19,975,354 of 1,301,534.....	<u>408,031</u>
Regular - 13,713,007/19,975,354 of 1,301,534.....	893,503

## Plaintiff's Exhibit No. 82-C

## SCHEDULE A-2

CLYDE PERKINS v. STANDARD OIL COMPANY OF CALIFORNIA  
 COMPUTATION OF AMOUNT OF PRICE DIFFERENTIAL  
 PER GALLON ON GASOLINE

Ethyl	Inclusive Days	Differential Per Gallon	Inclusive Days Times Differential Per Gallon
7/1/56 - 12/31/56 .....	184	.65	119.60
1/1/57 - 1/16/57 .....	16	.66	10.56
1/17/57 - 3/31/57 .....	74	.66	48.84
4/1/57 - 4/2/57 .....	2	.68	1.36
4/3/57 - 6/21/57 .....	80	.68	54.40
6/22/57 - 6/23/57 .....	2	.98	1.96
6/24/57 - 6/30/57 .....	7	.68	4.76
7/1/57 - 11/30/57 .....	153	.75	114.75
	518		356.23
Average differential per gallon - 518 days - .6877¢			
Regular			
7/1/56 - 12/31/56 .....	184	.65	119.60
1/1/57 - 1/16/57 .....	16	.66	10.56
1/17/57 - 3/31/57 .....	74	.66	48.84
4/1/57 - 4/2/57 .....	2	.68	1.36
4/3/57 - 6/21/57 .....	80	.68	54.40
6/22/57 - 6/23/57 .....	2	.98	1.96
6/24/57 - 6/30/57 .....	7	.68	4.76
7/1/57 - 11/30/57 .....	153	.75	114.75
	518		356.23¢
Average differential per gallon - 518 days - .6877¢			

For determination of differential per gallon see Schedule A-3 attached.

Plaintiff's Exhibit 82C

Case 369-59

## Plaintiff's Exhibit No. 82-D

Plat Exhibit 82-D	
Case	369-59
	Rptr
Date	Clerk

SCHEDULE A-3

CLYDE PERKINS V. STANDARD OIL COMPANY OF CALIFORNIACOMPUTATION OF AMOUNT OF PRICE DIFFERENTIAL PER GALLON ON GASOLINE

PRICES CHARGED BY STANDARD (NOTE 1)	DIFFERENTIAL
C.A. PERKINS SIGNAL OIL & GAS CO.	PER GALLON

ETHYL

7/1/56 - 12/31/56.....	14.90	14.25	.65
1/1/57 - 1/16/57.....	14.90	14.24	.66
1/17/57 - 3/31/57.....	15.40	14.74	.66
4/1/57 - 4/2/57.....	15.40	14.72	.68
4/3/57 - 6/21/57.....	15.80	15.12	.68
6/22/57 - 6/23/57.....	16.10	15.12	.98
6/24/57 - 6/30/57.....	16.10	15.42	.68
7/1/57 - 11/30/57.....	16.10	15.35	.75

REGULAR

7/1/56 - 12/31/56.....	12.90	12.25	.65
1/1/57 - 1/16/57.....	12.90	12.24	.66
1/17/57 - 3/31/57.....	13.40	12.74	.66
4/1/57 - 4/2/57.....	13.40	12.72	.68
4/3/57 - 6/21/57.....	13.60	12.92	.68
6/22/57 - 6/23/57.....	13.90	12.92	.98
6/24/57 - 6/30/57.....	13.90	13.22	.68
7/1/57 - 11/30/57.....	13.90	13.15	.75

Note 1: Prices charged by Standard as shown above were obtained from Standard's Consolidated Answer to Plaintiff's Interrogatory No. 15 adjusted as follows:

(1) Prices charged C. A. Perkins were increased by .33¢ per gallon.

CLYDE PERKINS V. STANDARD OIL COMPANY OF CALIFORNIA

Estimated Loss of Sales Volume

Period	Projected Sales - Based on Annual Increase of 10%	Actual Sales (Adjusted) Schedule A-5	Estimated Loss of Volume
Base Volume		<u>7,949,607</u>	
3/6 - 9/30/55	209/365 of 110% of 7,949,607	4,355,532	651,632
10/1/55 - 9/30/56	365/209 of 110% of 5,007,164	6,714,193	2,904,832
10/1/56 - 9/30/57	110% of 9,619,025	6,605,553	3,975,374
10/1/57 - 12/1/57	61/365 of 110% of 10,580,927	1,064,429	880,722
		<u>18,739,707</u>	<u>8,412,560</u>

**Plaintiff's Exhibit No. 82-E**

Gross profit per gallon.....  
 Estimated loss of gross profit (8,412,560 at 2.00%).....

2.00%  
\$168,251

Exhibit 82-E	Page 369-59	Noted	Date
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3 Year Ended 9/30/57

\$333,264

Total gross profit

Total gallon sold 21,646.645

Average gross

profit per gallon 1.54¢

Average price

differential

.6877

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2.2277¢

John McDaniel

Exhibit 82-E

Part of Record





## Plaintiff's Exhibit No. 82-F

CLYDE PERKINS V. STANDARD OIL COMPANY OF CALIFORNIA

## DETERMINATION OF ACTUAL SALES AS A BASIS FOR PROJECTING PROBABLE SALES VOLUME (GALLONS)

DEDUCTIONS					ADJUSTED ACTUAL SALES
TOTAL ACTUAL SALES	SALES THROUGH NEW STATIONS BUILT DURING THE PERIOD	HOOD RIVER	RIDDLE	DOLLAR CORNER	
	CANYONVILLE				
1/6/55 to 9/30/55.....	4,518,324	4,455	149,687	7,8650	4,355,532
10/1/55 to 9/30/56.....	7,339,444	28,146	458,872	108,503	6,714,193
10/1/56 to 9/30/57.....	6,993,276	98,276	192,500	96,947	6,605,553
10/1/57 to 12/1/57.....	1,124,310	7,338	28,043	24,500	1,064,429
	19,975,354	135,344	608,559	238,600	18,739,707

Page Volume:	
Actual sales - 4/1/55 to 9/30/55.....	4,181,435
Less: Sales through new stations - as above.....	162,792
Balance.....	4,018,643
Conversion to annual basis (calculated on the basis of 4/1/55 to 9/30/55 representing 55% of annual sales).....	7,306,624
Sales per year ended 9/30/56 - adjusted as above.....	6,714,193
Decrease.....	592,431
Percentage of decrease to 9/30/56 sales (592,431/6,714,193).....	8.8%
Per volume - 108.8% of 7,306,624.....	7,949,607

Exhibit 82-F

Case 369-59

Date

Per

Clerk

## Plaintiff's Exhibit No. 82-G-2

Exhibit	82 G-2
Case	369-59
Date	Rptr
	Clerk

SCHEDULE A-7

OLYMPER PERKINS V. STANDARD OIL COMPANY OF CALIFORNIALOSS OF GROSS PROFIT - FUEL OIL

	YEAR ENDED			TOTAL
	9/30/55	9/30/56	9/30/57	
<b>FUEL OIL:</b>				
Sales - Washington.....	\$313,066	\$364,890	\$253,303	
- Oregon.....	270,741	175,136	119,280	
	583,807	540,026	372,583	
Cost of sales - Washington	279,745	319,050	225,028	
- Oregon....	228,130	138,485	93,771	
	507,875	457,535	318,799	
Gross profit.....	\$ 75,932	\$ 82,461	\$ 53,784	
Loss of gross profit - excess of 9/30/56 over 9/30/57		<del>\$ 20,707</del>	<del>\$20,707</del>	
<i>Freight</i>		(24,757)	(7853)	
<i>Freight profit on P.S. 300</i>		(1,030)		
		<u>56,702</u>	<u>45,931</u>	<u>10,771</u>

Amounts of sales and cost of sales shown above were obtained from the books of account of Perkins Oil Company of Washington and Perkins Oil Co. of Oregon.

## Plaintiff's Exhibit No. 82-J

Plaintiff's Exhibit	82-J
Page	309-59
Repr	
Clerk	<i>Red</i>

SCHEDULE A-1

CLYDE PERKINS V. STANDARD OIL COMPANY OF CALIFORNIA  
COMPUTATION OF LOSS IN VALUE OF BUSINESS

	SALES IN GALLONS			
	4/1/55 to 9/30/55	10/1/55 to 9/30/56	10/1/56 to 9/30/57	10/1/57 to 11/30/57
Stations owned by C. A. Perkins				
Sales.....	1,387,085	2,321,759	2,091,256	327,505
Adjustments to annual basis - See Note.....	1,134,888			1,719,401
	<u>2,521,973</u>			<u>2,046,906</u>
Projected volume - based on annual increase of 10%.....		2,774,170	3,051,587	3,356,746
Actual volume - annual basis.....				2,046,906
Loss of volume - annual basis.....				<u>1,309,840</u>
Average monthly loss of volume.....				<u>109,153</u>
Appreciation in going concern value at \$1.25 per gallon of monthly volume.....				<u>\$ 136,441</u>

Volume for the period from April 1 to September 30, 1955 is estimated to represent 55% of a year's volume and volume for the period October 1 to November 30, 1957 is estimated to represent 16% of a year's volume. These percentages were calculated from taxable gallonage reported to the State of Oregon for gasoline tax purposes for the calendar years 1955 and 1957, respectively.



## Plaintiff's Exhibit No. 82-L

Exhibit	82 L
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By	Reed
Date	Clerk

SCHEDULE A-13

CLIVE PERKINS V. STANDARD OIL COMPANY OF CALIFORNIACOMPUTATION OF LOSS IN VALUE OF BUSINESS

## SALES IN GALLONS

4/1/55 to 9/30/55	10/1/55 to 9/30/56	10/1/56 to 9/30/57	10/1/57 to 11/30/57
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Stations leased by C. A.  
Perkins.

Sales.....	421,615	907,993	697,079	86,668
Adjustment to annual basis - See Note.....	344,958			455,007
	<u>766,573</u>			<u>541,675</u>

Projected volume - based on annual increase of 10%.....	843,230	927,553	1,020,308
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Actual volume - annual basis.....			<u>541,675</u>
-----------------------------------	--	--	----------------

Loss of volume - annual basis.....			<u>478,633</u>
------------------------------------	--	--	----------------

Average monthly loss of volume.....			<u>39,886</u>
--	--	--	---------------

Depreciation in going concern value at \$1.25 per gallon of monthly volume.....			<u>\$ 49,857</u>
---	--	--	------------------

Depreciation in going concern value at \$0.75 per gallon of monthly value.....			<u>\$ 29,915</u>
--	--	--	------------------

Volume for the period from April 1 to September 30, 1955 is estimated to represent 55% of a year's volume and volume for the period October 1 to November 30, 1957 is estimated to represent 16% of a year's volume. These percentages were calculated from taxable gallonage reported to the State of Oregon for gasoline tax purposes for the calendar years 1955 and 1957, respectively.



## Plaintiff's Exhibit No. 82-M

Plaintiff's Exhibit	82-M
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Repr	Perd
Clerk	

SCHEDULE A-14

PERKINS OIL COMPANY OF CALIFORNIA  
Computation of loss in value of business

Sales in Gallons			
4/1/55 to 9/30/55	10/1/55 to 9/30/56	10/1/56 to 9/30/57	10/1/57 to 11/30/57

Stations leased by  
Perkins Oil Company  
of Washington

Sales.....	84,098	238,612	224,119	19,277
Adjustment to annual basis - See Note.....	68,807			101,204
	<u>152,905</u>			<u>120,481</u>
Projected volume - based on annual increase of 10%.....		168,195	185,015	203,516
Actual volumes - annual basis.....				<u>120,481</u>
Loss of volume - annual basis.....				<u>83,035</u>
Average monthly loss of volume.....				<u>6,920</u>
Depreciation in going concern value at \$1.25 per gallon of monthly volume.....				<u>\$ 8,650</u>
Depreciation in going concern value at .75 per gallon of monthly volume.....				<u>\$ 5,190</u>

Volume for the period from April 1 to September 30, 1955 is estimated to represent 55% of a year's volume and volume for the period October 1 to November 30, 1957 is estimated to represent 16% of a year's volume. These percentages were calculated from taxable gallonage reported to the State of Oregon for gasoline tax purposes for the calendar years 1955 and 1957, respectively.

[Exhibit withdrawn]

## Plaintiff's Exhibit No. 82-O

SCHEDULE A-16

CLYDE PERKINS v. STANDARD OIL COMPANY OF CALIFORNIAComputation of Loss in Value of Business - Fuel and Diesel Oil

Sales - Calendar year 1955 - Gallons.....	4,463,203
Sales - October and November - 1957.....	<u>501,298</u>
Adjusted to Annual basis.....	<u>2,387,133</u>
Loss in volume - Gallons.....	<u>2,076,070</u>
Estimated gross profit per gallon - 1.5¢.....	\$ 31,141
Estimated operating expenses per gallon - .75¢.....	<u>15,571</u>
Loss of income on volume lost.....	<u>\$ 15,570</u>
Loss in going concern value attributable to loss in volume - 10 times net income.....	<u>\$ 155,700</u>

82-B  
 EC-2  
 L  
 M  
 O

128 420  
 168 251  
 10 771

136 441  
 29 915  
 5 190  
 155 700

634,688

~~141,407~~

~~620,539~~

Glen McDanel

-30,275

Reference 82-P-1

\$604,413

TOTAL CORRECTED

PER EXHIBIT 1692



CLYDE PERKINS V. STANDARD OIL COMPANY

Summary of Gallons Sold - By Customers

Name	4/1/55 to 9/30/55	10/1/55 to 9/30/56	10/1/56 to 9/30/57	10/1/57 to 12/1/57	Month Service Began	Month Service Ended	4/1/55 9/30/55
Dallas Bennett.....			75,477	19,335	March 1957		
Champion Fleet Service.....	203,211	417,259	391,025	59,534			33,869
Don's Champion Service.....	82,326	146,654	127,107	24,490			13,721
The Don Fraser Co.....	452,945	853,252	805,508	145,885			75,491
Interstate Service, Inc.....	40,945	28,013				March 1956	6,824
Burt Pepper.....		17,648	148,611	15,632	Sept. 1956		
Perkins Oil Co. of Roseburg.....	360,148	498,758	361,988	43,515			60,025
R & H Champion Fleet Service.....	247,510	360,215	181,540	19,114			41,252
Sam Cremedas.....	18,540	15,037	14,801	300			3,090
Malloy Fuel Oil.....		5,991	500		Oct. 1955	Jan. 1957	
Twin Cities Oil, Inc.....	478,400	758,957	580,249	75,508			79,733
Hussey Heating Oils.....	71,112	139,875				Sept. 1956	11,852
Don Fraser Oil Co.....	452,946	853,253	805,507	145,885			75,491
Holleman Motor Co.....	163,999	299,022	274,612	41,838			27,333
Barcus Sales & Service.....			111,901	11,151	Nov. 1956		
T & R Service.....		35,802	45,154	3,347	Nov. 1955		
Myrtle Point Oil Co.....	107,296	187,283	204,722	30,332			17,883
Mid Oil Co.....	150,320	385,886	60,690			June 1957	25,053
Webster Bros. Champion Service...	84,098	204,272	130,748		July 1955	July 1957	28,033
O.K. Rubber Welders.....		34,340	93,370	19,277	May 1956		
E. A. White.....			51,907	20,631	May 1957		
Donald Shones.....			218,419	17,629	Oct. 1956		
C. S. Murray.....	58,395	356,107	457,871	80,309	July 1955		19,465
Lynn Bros. Champion Fleet Service		29,730	78,276	7,338	July 1956	Oct. 1957	
R. A. Briggs & Son.....	20,743	23,348	3,052		May 1955	Oct. 1956	4,149
Paris B. Breedlove.....			229,073	127,207	Nov. 1956		
Ed. Gleason.....	11,139	38,115	63,664	6,221			1,857
Grace's Service Station.....	122,887	214,783	231,661	33,499			20,481
Laffing Gas Service.....			101,796	30,809	Nov. 1956		
Maxwell Oil Co.....	129,850	205,540	116,400		Aug. 1955	Sept. 1957	64,925
Hoyt Medford Service Station.....		144,396	34,601		Apr. 1956	Apr. 1957	
Ben Pullen.....	98,341	183,070	152,569	20,039			16,390
Les Carter.....	419,833	3,947				Oct. 1955	69,972
Great Lakes Carbon Corp.....	12,996	8,059				Feb. 1956	2,166
Stokes Trucking Co.....	145,016	155,029	71,614	6,104			24,169
Vancouver Bus Co.....	28,040	71,148	25,419	6,735			4,673
Dollars Corner.....	8,650	108,503	96,947	24,500	Sept. 1955		8,650
E. Vern Green.....	4,455	28,146	192,500	28,043	Sept. 1955		4,455
Donald Shones.....	149,687	458,872				Sept. 1956	24,948
TOTAL.....	4,123,828	7,270,309	6,539,279	1,064,207			765,950



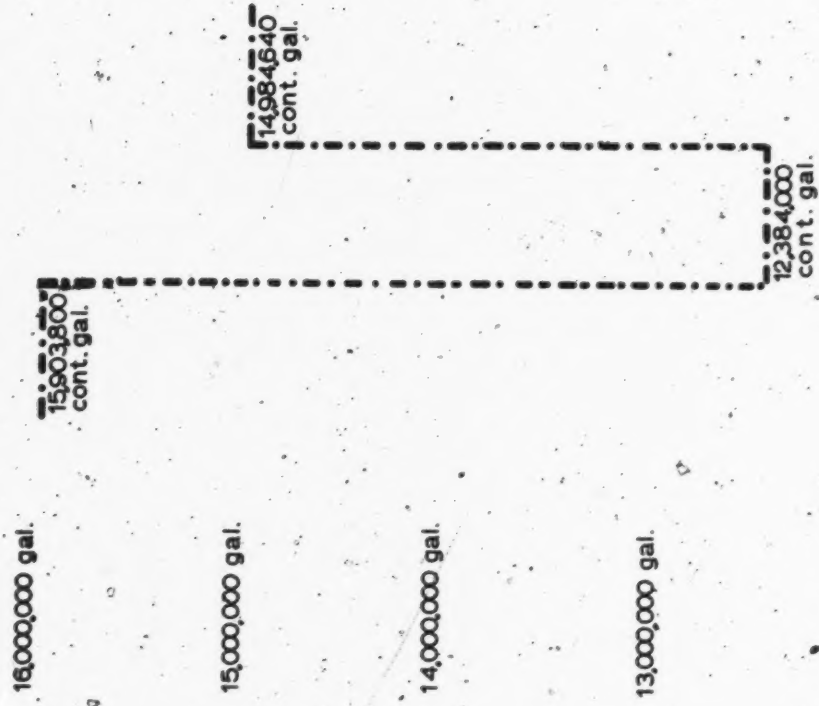
## CLYDE PERKINS V. STANDARD OIL COMPANY

Plaintiff's Exhibit No. 93-A-1

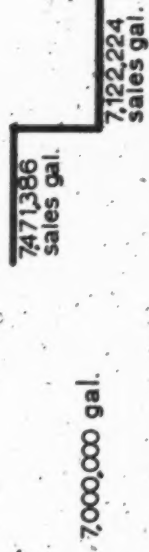
## Summary of Gallons Sold - By Customers

/55 to 0/55	10/1/55 to 9/30/56	10/1/56 to 9/30/57	10/1/57 to 12/1/57	Month Service Began	Month Service Ended	Average Gallons Per Month			
						4/1/55 to 9/30/55	10/1/55 to 9/30/56	10/1/56 to 9/30/57	10/1/57 to 12/1/57
		75,477	19,335	March 1957				12,580	9,668
,211	417,259	391,025	59,534			33,869	34,772	32,585	29,767
,326	146,654	127,107	24,490			13,721	12,221	10,592	12,245
,945	853,252	805,508	145,885			75,491	71,104	67,126	72,943
,945	28,013				March 1956	6,824	4,669		
	17,648	148,611	15,632	Sept. 1956			17,648	12,384	7,816
,148	498,758	361,988	43,515			60,025	41,563	30,166	21,758
,510	360,215	181,540	19,114			41,252	30,018	15,128	9,557
,540	15,037	14,801	300			3,090	1,253	1,233	150
	5,991	500		Oct. 1955	Jan. 1957		499	125	
,400	758,957	580,249	75,508			79,733	63,246	48,354	37,754
,112	139,875				Sept. 1956	11,852	11,656		
,946	853,253	805,507	145,885			75,491	71,104	67,126	72,943
,999	299,022	274,612	41,838			27,333	24,919	22,884	20,919
		111,901	11,151	Nov. 1956				10,173	5,576
	35,802	45,154	3,347	Nov. 1955			3,255	3,763	1,674
,296	187,283	204,722	30,332			17,883	15,607	17,060	15,166
,320	385,886	60,690			June 1957	25,053	32,157	6,743	
,098	204,272	130,748		July 1955	July 1957	28,033	17,023	13,075	
	34,340	93,370	19,277	May 1956			6,868	7,781	9,639
		51,907	20,631	May 1957				10,381	10,316
		218,419	17,629	Oct. 1956				18,202	8,815
,395	356,107	457,871	80,309	July 1955		19,465	29,676	38,156	40,155
	29,730	78,276	7,338	July 1956	Oct. 1957		9,910	6,523	7,338
,743	23,348	3,052		May 1955	Oct. 1956	4,149	1,946	3,052	
		229,073	127,207	Nov. 1956				20,825	63,604
,139	38,115	63,664	6,221			1,857	3,176	5,305	3,111
,887	214,783	231,661	33,499			20,481	17,899	19,305	16,750
		101,796	30,809	Nov. 1956				9,234	15,405
,850	205,540	116,400		Aug. 1955	Sept. 1957	64,925	17,128	9,700	
	144,396	34,601		Apr. 1956	Apr. 1957		24,066	4,943	
,341	183,070	152,569	20,039			16,390	15,256	12,714	10,020
,833	3,947				Oct. 1955	69,972	3,947		
,996	8,059				Feb. 1956	2,166	1,612		
,016	155,028	71,614	6,104			24,169	12,919	5,968	3,052
,040	71,148	25,419	6,735			4,673	5,929	2,118	3,368
,650	108,503	96,947	24,500	Sept. 1955		8,650	9,042	8,079	12,250
,455	28,146	192,500	28,043	Sept. 1955		4,455	2,346	16,042	14,022
,687	458,872				Sept. 1956	24,948	38,239		
828	7,270,309	6,539,279	1,064,207			765,950	652,673	569,445	535,781

1955 1956 1957  
 sept.-sept. sept.-sept. sept.-sept.  
 PERKINS SHARE (51.6%) OF CONTRACT MAXIMUM



## DECLINE OF GASOLINE SALES 1955 THRU 1957



2

DECLINE OF GASOLINE SALES  
1955 THRU 1957

12,384,000  
cont. gal.

14,000,000 gal.

13,000,000 gal.

12,000,000 gal.

11,000,000 gal.

10,000,000 gal.

9,000,000 gal.

8,000,000 gal.

7,000,000 gal.

6,000,000 gal.

7,471,386  
sales gal.

7,122,224  
sales gal.

sales gal.  
4,737,713

1955 1956 1957

EXHIBIT 93-B  
FILED MAY 10 1957  
CLERK



1955      1956      1957

4,500,000

4,000,000

3,500,000

3,000,000

2,500,000

2,000,000

1,500,000

1,000,000

4,463,203

GALLONS

3,600,485

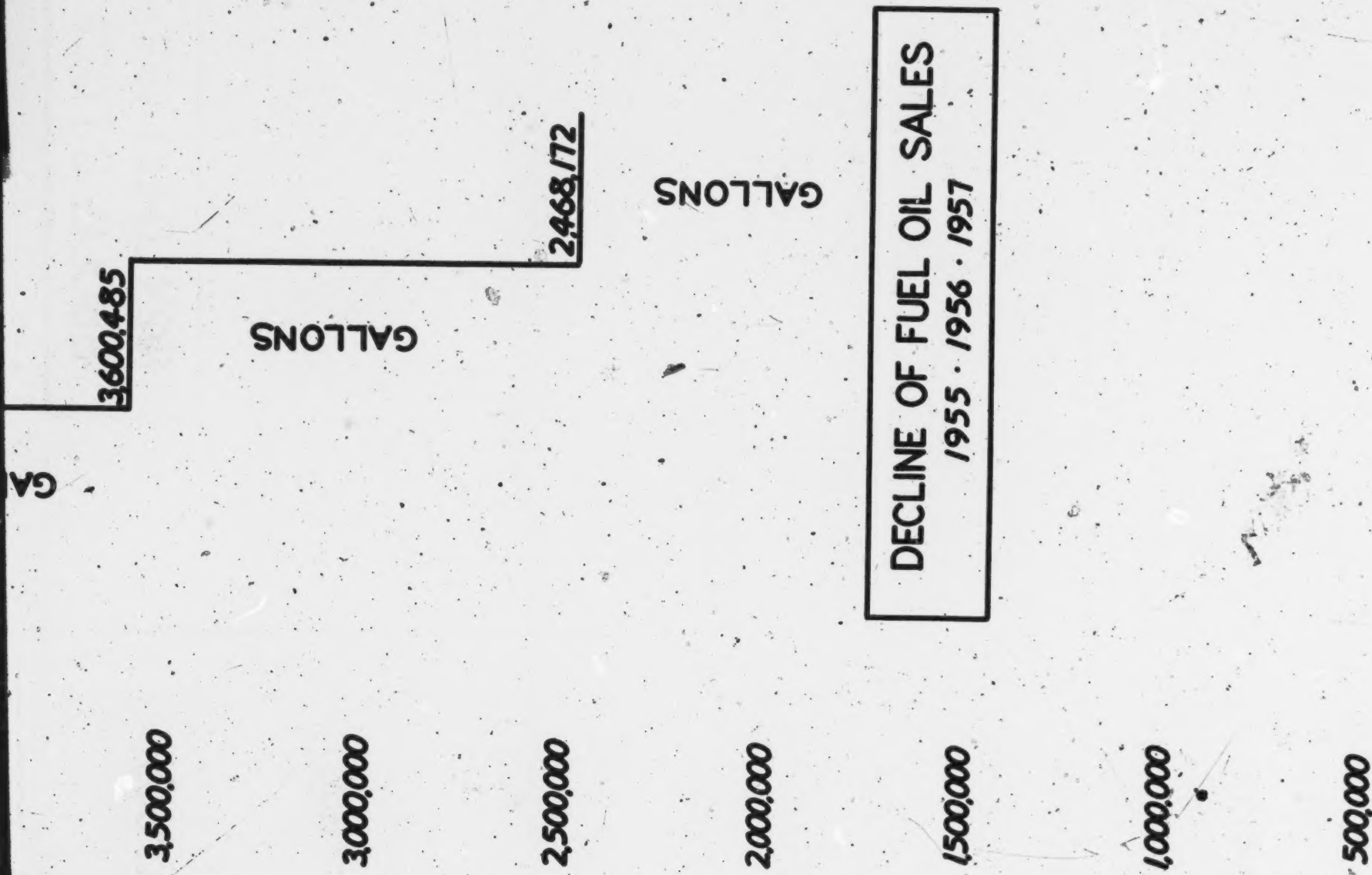
GALLONS

2,468,172

GALLONS

DECLINE OF FUEL OIL SALES  
1955 · 1956 · 1957

③





1955 1956 1957

\$30,000

\$24,000

\$18,000

\$12,000

\$6,000

0

\$6,000

\$12,000

\$18,000

\$24,000

PROFIT & LOSS  
1954 THRU 1957

BREAK-EVEN LINE

\$6,620.00

\$10,421.00

~~\$10,421.00~~\*

\$18,969.00

PROFIT & LOSS  
1954 THRU 1957

BREAK-EVEN LINE

\$12,000

\$6,000

0

\$6,000

\$12,000

\$18,000

\$24,000

\$30,000

\$6,620.00

\$18,969.00

\$10,421.00

~~\$11,421.00~~\*

1955 1956 1957

FILED  
JUN 1957  
CLERK

1955 1956 1957

\$ 20,000

\$ 18,000

\$ 16,000

\$ 14,000

\$ 12,000

\$ 10,000

\$ 8,000

\$ 6,000

\$ 4,000

\$ 19,266 <sup>00</sup>

\$ 16,215 <sup>00</sup>

\$ 6,749 <sup>00</sup>

RENTS ABSORBED





5

RENTS ABSORBED



\$14,000

\$12,000

\$10,000

\$8,000

\$6,749.00

\$6,000

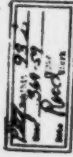
\$4,000

\$2,000

0

1955 1956 1957

FILED  
JUL 1957  
JUL 1957



## SCHEDULE A-3

## CLYDE PERKINS V. STANDARD OIL COMPANY OF CALIFORNIA

## COMPUTATION OF AMOUNT OF PRICE DIFFERENTIAL PER GALLON ON GASOLINE

PRICES CHARGED BY STANDARD (NOTE 1) DIFFERENTIAL,  
C.A. PERKINS SIGNAL OIL & GAS CO. PER GALLON

## ETHYL

## Period:

3/6/55 - 4/21/55.....	14.60¢	13.60¢	1.00¢
4/22/55 - 4/30/55.....	14.90	13.90	1.00
5/1/55 - 6/28/55.....	14.40	13.90	.50
6/29/55 - 7/10/55.....	14.40	14.40	
7/11/55 - 1/11/56.....	14.90	14.40	.50
1/12/56 - 1/31/56.....	14.90	14.40	.50
2/1/56 - 2/5/56.....	14.40	14.40	
2/6/56.....	14.40	14.70	(.30)
2/7/56 - 2/27/56.....	14.70	14.70	
2/28/56.....	14.90	14.70	.20
3/1/56 - 3/17/56.....	14.90	14.18	.72
3/18/56 - 6/30/56.....	14.90	14.38	.52
7/1/56 - 12/31/56.....	14.90	14.25	.65
1/1/57 - 1/16/57.....	14.90	14.24	.66
1/17/57 - 3/31/57.....	15.40	14.74	.66
4/1/57 - 4/2/57.....	15.40	14.72	.68
4/3/57 - 6/21/57.....	15.80	15.12	.68
6/22/57 - 6/23/57.....	16.10	15.12	.98
6/24/57 - 6/30/57.....	16.10	15.42	.68
7/1/57 - 11/30/57.....	16.10	15.35	.75

## REGULAR

3/6/55 - 4/21/55.....	12.60	12.10	.50
4/22/55 - 4/30/55.....	12.90	12.40	.50
5/1/55 - 6/28/55.....	12.65	12.40	.25
6/29/55 - 7/10/55.....	12.65	12.70	(.05)
7/11/55 - 1/11/56.....	12.95	12.70	.25
1/12/56 - 1/31/56.....	12.95	12.70	.25
2/1/56 - 2/5/56.....	12.70	12.70	
2/6/56 - 2/27/56.....	12.70	12.70	
2/28/56.....	12.90	12.70	.20
3/1/56 - 3/17/56.....	12.90	12.18	.72
3/18/56 - 6/30/56.....	12.90	12.38	.52
7/1/56 - 12/31/56.....	12.90	12.25	.65
1/1/57 - 1/16/57.....	12.90	12.24	.66
1/17/57 - 3/31/57.....	13.40	12.74	.66
4/1/57 - 4/2/57.....	13.40	12.72	.68
4/3/57 - 6/21/57.....	13.60	12.92	.68
6/22/57 - 6/23/57.....	13.90	12.92	.98
6/24/57 - 6/30/57.....	13.90	13.22	.68
7/1/57 - 11/30/57.....	13.90	13.15	.75

Note 1: Prices charged by Standard



6/29/55 - 7/10/55.....	14.40	14.40	.50
7/11/55 - 1/11/56.....	14.90	14.40	.50
1/12/56 - 1/31/56.....	14.90	14.40	(.30)
2/1/56 - 2/5/56.....	14.40	14.40	
2/6/56.....	14.40	14.70	
2/7/56 - 2/27/56.....	14.70	14.70	.20
2/28/56.....	14.90	14.70	.72
3/1/56 - 3/17/56.....	14.90	14.18	.52
3/18/56 - 6/30/56.....	14.90	14.38	.65
7/1/56 - 12/31/56.....	14.90	14.25	.66
1/1/57 - 1/16/57.....	14.90	14.24	.66
1/17/57 - 3/31/57.....	15.40	14.74	.68
4/1/57 - 4/2/57.....	15.40	14.72	.68
4/3/57 - 6/21/57.....	15.80	15.12	.98
6/22/57 - 6/23/57.....	16.10	15.12	.68
6/24/57 - 6/30/57.....	16.10	15.42	.75
7/1/57 - 11/30/57.....	16.10	15.35	

REGULAR

3/6/55 - 4/21/55.....	12.60	12.10	.50
4/22/55 - 4/30/55.....	12.90	12.40	.50
5/1/55 - 6/28/55.....	12.65	12.40	.25
6/29/55 - 7/10/55.....	12.65	12.70	(.05)
7/11/55 - 1/11/56.....	12.95	12.70	.25
1/12/56 - 1/31/56.....	12.95	12.70	.25
2/1/56 - 2/5/56.....	12.70	12.70	
2/6/56 - 2/27/56.....	12.70	12.70	20
2/28/56.....	12.90	12.70	.72
3/1/56 - 3/17/56.....	12.90	12.18	.52
3/18/56 - 6/30/56.....	12.90	12.38	.65
7/1/56 - 12/31/56.....	12.90	12.25	.66
1/1/57 - 1/16/57.....	12.90	12.24	.66
1/17/57 - 3/31/57.....	13.40	12.74	.68
4/1/57 - 4/2/57.....	13.40	12.72	.68
4/3/57 - 6/21/57.....	13.60	12.92	.98
6/22/57 - 6/23/57.....	13.90	12.92	.68
6/24/57 - 6/30/57.....	13.90	13.22	.75
7/1/57 - 11/30/57.....	13.90	13.15	

Note 1: Prices charged by Standard as shown above were obtained from Standard's Consolidated Answer to Plaintiff's Interrogatory No. 15 adjusted as follows:

(1) Prices charged C. A. Perkins were increased by .33¢ per gallon.

(2) Prices charged Signal Oil & Gas Co. F.O.B. Seattle for the period from 6/29/55 to 8/1/56 were reduced by .10¢ per gallon to eliminate Business and Occupation tax included therein. For the period subsequent to 8/1/56 F.O.B. Willbridge prices were used.



**Plaintiff's Exhibit Nos. 93-M and 93-N**

**DIFFERENCE IN TOTAL MARGINS BETWEEN SIGNAL  
OIL & GAS CO. AND PERKINS OIL CO.**

Ex 93N—Ethyl  
93M—Regular

Date	Contract Basic Margin	Temporary Additional Discounts	Day to Day Discounts	Total Margins
<b>Signal Oil &amp; Gas Co.—Regular</b>				
7-1-47	4.50¢			4.50¢
3-1-56	4.50	0.52¢		5.02
7-1-56	4.50	0.65		5.15
1-1-57	4.50	0.66		5.16
4-1-57	4.50	0.68		5.18
7-1-57	4.50	0.75		5.25
<b>Perkins Oil Co.—Regular</b>				
3-2-55	3.50¢	0.50¢		4.00¢
5-1-55	3.50	0.50	0.25¢*	4.25
8-8-55	3.50	0.50	0.25	4.25
2-1-56	3.50	0.50	0.50	4.50
7-1-57	3.50	0.50	0.50	4.50

\*0.25¢ per gallon allowance retroactive to 5-1-55 granted by Standard 8-8-55.

<b>Signal Oil &amp; Gas Co.—Ethyl</b>				
7-1-47	5.50¢			5.50¢
3-1-56	5.50	0.52¢		6.02
7-1-56	5.50	0.65		6.15
1-1-57	5.50	0.66		6.16
4-1-57	5.50	0.68		6.18
7-1-57	5.50	0.75		6.25
<b>Perkins Oil Co.—Ethyl</b>				
3-2-55	4.00¢	0.50¢		4.50¢
5-1-55	4.00	1.00		5.00
2-1-56	4.00	1.00	0.50¢	5.50
7-1-57	4.00	1.00	0.50	5.50

Basic margins are calculated from Standard's posted tank wagon price.

## Plaintiff's Exhibit No. 93-O

Exhibit	930
Case	369-57
Rptr	
Date	
Clerk	Reid

PERKINS OIL COMPANY

(Consolidated Comparative Profit Figures  
for PERKINS of Oregon and Washington)

SALES

	<u>9-30-55</u>	<u>9-30-56</u>	<u>9-30-57</u>
Gasoline	1,784,495	1,837,380	1,756,935
Fuel Oils	583,807	540,026	372,583
Other	<u>350,086</u>	<u>299,876</u>	<u>183,772</u>
Total Sales:	2,718,388	2,677,282	2,313,200
Gross Profit	190,351	217,991	181,151

EXPENSES

	184,236	220,834	175,851
<u>Rent Absorption*</u>			
Rent in	30,498	35,627	32,115
Rent out	<u>37,247</u>	<u>51,842</u>	<u>51,381</u>
	( 6,749)	(16,215)	(19,266)

OTHER INCOME

13,094.	18,692	17,021**
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OTHER EXPENSE

19,080	18,603	10,081
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## Net Gain (Loss)

( 6,620)	(18,969)	( 7,026)*
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## Plaintiff's Exhibit No. 102

Exhibit	1001
Case	369-59
Rptr	
Date	
Clerk	

## CONSIGNMENT AGREEMENT

Exhibit	102
Case	369-59
Rptr	
Date	
Clerk	

THIS AGREEMENT, executed July 16, 1956, between STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation, hereinafter called "Standard", and LEE G. POWELL, CLYDE A. PERKINS, HARRIS DISTRIBUTION COMPANY, and ARRAH OIL COMPANY, hereinafter collectively called "Consignee",

1. Standard hereby authorizes Consignee to receive and sell for Standard all products hereinafter provided (other authority), and to execute all documents of this agreement, the terms of Standard specified herein, and to receive all proceeds of this agreement, all proceeds to be paid to "Products".

2. The products to be consigned hereunder are first grade gasoline, second grade gasoline, kerosene, fuel oil, stove oil, and automotive diesel fuel. Such products shall be of the same grade and quality as are delivered by Standard to the jobber in the area covered by this agreement. If Standard discontinues marketing in said area, Consignee shall be consigned hereunder this agreement shall terminate as to such product or products; provided, however, any product consigned by Standard in said area in case of any such discontinued product may be marketed under this agreement under terms mutually agreed upon between the parties hereto.

3. Consignee is authorized to sell products consigned hereunder, on a nonexclusive basis in the area outlined and indicated on the print marked Exhibit B attached hereto and made a part hereof.

4. The term of this agreement shall be from September 1, 1956, to August 31, 1958, and thereafter until terminated by ninety (90) months' prior written notice from either party to the other of intention so to do, provided, however, such notice shall not be served by either party prior to August 31, 1958.

5. Consignee shall receive products hereunder into tank cars or tank truck and trailers or barge as arranged by Consignee, in minimum lots of 5,000 gallons, at supply points located by Standard from time to time. At present, the supply point shall be Standard's Milbridge, Oregon, supply terminal. The measurement of quantities consigned hereunder shall be determined at said supply points at time of delivery to Consignee.

All products consigned in bulk hereunder and received by Consignee from Standard at said supply points shall, except as otherwise authorized by Standard, be placed by Consignee into storage tanks located at Consignee's bulk plants in the area covered by this agreement. Consignee agrees not to adulterate any product consigned hereunder or mix the same with any other product or substance whatsoever. Sales of said products from time to time made by Consignee on behalf of Standard shall be made by delivery of the quantities so placed in storage.

6. For the purpose of this agreement, the following quantities of products shall be deemed to constitute a sufficient consignment to be carried on hand by Consignee from time to time at Consignee's said bulk plants:

Product	Quantity - Gallons
S.O. JUNE OLIVE (FIRST BRAND)	83,734
S.O. JUNE OLIVE (SECOND BRAND)	81,973
S.O. JUNE OLIVE	5,000
S.O. JUNE DIESEL OIL	43,951
S.O. JUNE DIESEL OIL	46,803
S.O. JUNE FURNACE OIL	5,000
S.O. JUNE AUTOMOTIVE DIESEL FUEL	5,000

MICROFILMED

NOV 1957

If Consignee shall hereafter increase its storage capacity for products, then the amount of operating consignment, at the option of Standard, may be increased in proportion to the said increase in storage capacity.



Commencing at the date of this agreement, Standard shall make, and Consignee shall take possession of, consignment deliveries of products until Consignee shall have the operating consignment of products above set forth. As Consignee makes sales of consigned products it shall account to Standard for the proceeds of such sales as hereinafter provided. As such sales are made, Consignee shall order such additional quantities of products as may be necessary to keep on hand a consigned stock equal to said operating consignment; provided that during the last month of the contract term Consignee may make sales hereunder out of said operating consignment without ordering such additional quantities, to the extent necessary to eliminate, so far as is practicable, the existence at the expiration of the contract of unsold consigned stocks to be redelivered to Standard. Standard shall have the right during business hours on any business day to inspect and measure the consigned stocks in Consignee's possession hereunder.

7. Consignee agrees to use its best efforts to promote the sale of products consigned hereunder, and it is agreed that such promotion of sale by Consignee should result in sales of the following specified quantities of products during each contract year of this contract:

Product	Specified Quantities (Gallons)	
	First Contract Year (September 1, 1955, To August 31, 1957)	Each Contract Year From and After August 31, 1957
S.O. JOBBER GASOLINE (FIRST BRAND)	8,000,000	Quantities will be adjusted in accordance with the formula set forth below.
S.O. JOBBER GASOLINE (SECOND BRAND)	12,000,000	
S.O. JOBBER KEROSENE	100,000	
S.O. JOBBER MOTOR OIL	6,000,000	
S.O. JOBBER FURNACE OIL	9,000,000	
S.O. JOBBER DIESEL FUEL	6,000,000	
S.O. JOBBER AUTOMOTIVE DIESEL FUEL	100,000	

In order to provide for increases and decreases in Jobber's consignment replacement deliveries of petroleum products, the above specified quantities shall automatically be adjusted on the first day of each ensuing contract year on the basis of 110% of Jobber's actual replacement deliveries during the preceding contract year.

In the case of the products bracketed above, Consignee may reduce consignment deliveries of one product and increase those of another within the same product bracket by not more than twenty-five percent (25%) of the specified quantity of the former. Any such reductions and increases shall be adjusted for in applying the percentages hereafter stated in this paragraph 7.

Except at Standard's option, it shall not be obligated under this agreement to make consignment deliveries during any contract year of quantities of any products in excess of the above specified quantity of such products applicable to such contract year as above set forth in this paragraph. Specified quantities for a portion of a contract year shall be on a proportionate basis. Consignment deliveries hereunder shall be in approximately equal monthly quantities, subject to reasonable seasonal variations, but Standard may from time to time during such periods as it may deem appropriate, require consignment deliveries to be in approximately equal weekly or daily quantities. If Consignee fails to make sales in any contract year of at least sixty percent (60%) of the quantity of each product specified in this paragraph for the particular contract year involved, it shall be deemed that Consignee has not fulfilled its obligation to use its best efforts to promote the sale of products consigned hereunder, and Standard shall have the right within thirty (30) days after the close of such contract year, to terminate this agreement by giving Consignee sixty (60) days' prior written notice of termination.

8. Title to all products consigned hereunder shall remain in Standard until sold by Consignee on behalf of Standard, and Standard shall bear the risk of loss or damage thereto occurring prior to delivery to the customer, except that loss or damage caused or contributed to by the fault of the Consignee or those employed by or acting for Consignee shall be borne by Consignee; and except that ordinary losses in handling, including, but not limited to, spillage and evaporation losses, shall also be borne by Consignee.

9. Products consigned hereunder shall be stored and sold by Consignee at the price posted or authorized by Standard at the time and place of sale for the same or similar products and particular type of delivery, quantity, and class of trade involved.

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All sales hereunder shall be for cash unless Consignee elects to assume the risk for credit sales. If Consignee makes credit sales, Consignee will account to Standard for such sales as though the same had been made for cash.

Standard reserves the right to select its customers. In this connection, effective with the commencement date hereof and continuing until written notice by Standard to the contrary, Consignee shall not sell or distribute any of the products consigned hereunder to other than service station or consuming accounts. In the event Consignee desires to sell or distribute said products to resale accounts not selling through service stations exclusively, Standard's written consent shall first be secured.

Subject to the provisions of paragraph 13 hereof, Consignee shall account to Standard for the proceeds of all sales hereunder, and the commissions to be paid by Standard to Consignee for selling the products consigned hereunder shall be determined, as provided in Exhibit "A" attached hereto and made a part hereof. All such proceeds shall be held by Consignee as trustee for Standard, segregated and identified apart from any funds of Consignee, until such proceeds are paid to Standard as provided in Exhibit "A".

Consignee agrees to keep complete and accurate records of the sales made by it hereunder and of the proceeds of such sales, and to make such records available at Consignee's principal office for inspection by Standard during business hours on any business day.

All expenses incurred by Consignee in connection with Consignee's performance under this agreement, including (but not by way of limitation) all expenses of transportation, handling, storage, sale and distribution of the consigned products, shall be paid by Consignee, the amount of commissions payable to Consignee having been so computed as to allow for all such expenses.

10. All products consigned hereunder shall be sold under brand names or other product designations approved by Standard, and Consignee shall not authorize or permit said products to be resold under any other brand names or designations. Consignee agrees not to represent, or authorize or permit any other person to represent, that products consigned hereunder are products of Standard, unless Standard otherwise authorizes Consignee in writing and there shall be no identifications, designations or markings of any kind upon any transportation, storage or other facilities or equipment used for transporting or storing, or in connection with the handling or sale of any product consigned hereunder, that would identify any such product with Standard.

11. In connection with the performance of this agreement, Consignee is engaged in an independent business and nothing herein shall be construed as granting to Standard any right to control Consignee with respect to his conduct of said business. Standard has no right to exercise any control over any of Consignee's employees, all of whom are entirely under the control and direction of Consignee, who shall be responsible for their actions and omissions. Consignee shall at its own expense, during the term hereof, maintain full insurance under applicable Workmen's Compensation Laws, covering all persons subject to said laws employed by and working for Consignee in connection with the performance of this agreement, and upon request shall furnish Standard with satisfactory evidence of the maintenance of such insurance. Consignee shall pay and bear all contributions and payroll taxes required under the Federal Social Security Laws and State Unemployment Compensation Laws, or other payments under any laws of similar character, as to all persons employed by and working for Consignee.

12. Consignee agrees to protect, defend and hold Standard harmless from and against all claims for damage to property (including Consignee's property) or injury to or death of persons caused or contributed to by, or directly or indirectly resulting in any way from any acts or omissions of Consignee or Consignee's employees.

Consignee, at its own expense, shall secure and maintain insurance in companies, forms and amounts satisfactory to Standard, but such amounts shall be for not less than \$200,000/\$200,000 Bodily Injury and \$100,000 Property Damage, specifically to cover the foregoing assumed liability, and shall furnish Standard with satisfactory evidence of such insurance. Consignee, at its own expense, shall also secure insurance as nearly as possible against all risks of loss or damage to the consigned products, in the amounts, companies and policy forms satisfactory to Standard under policies naming Standard as an additional insured and making losses payable to Standard or Consignee as their interests may appear.

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All policies of insurance shall provide against termination by the insurer without ten (10) days' prior written notice to Standard, and the policies or certificates of insurance shall be endorsed "Premium paid" and deposited with Standard.

13. Any tax, duty, toll, fee, import, charge or other exaction, or the amount equivalent thereto, and any increase thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, manufacture, use, sale or ownership of the goods the subject matter of this agreement, if collectible or payable by Standard and deducted from or not included in the amount at which Consignee shall account to Standard as provided in Paragraph 9 hereof, shall be added to such amount and shall be paid to Standard by Consignee. In any case in which any such tax, duty, toll, import, charge or other exaction is not part of the price at which Consignee is authorized to make sales hereunder, Consignee may add it to the price in making sales.

14. In the event Consignee fails in any way to use its best efforts to promote the sale of products consigned hereunder, or otherwise breaches any provision of this agreement, Standard shall give Consignee written notice of any such breach and Consignee shall have five (5) days within which to comply with the provisions breached. If said breach is not corrected within said five (5) day period, Standard may, at its option, subject to the provisions of Paragraph 20 hereof, terminate this agreement by giving Consignee twenty-five (25) days' notice thereof in writing.

In the event of any breach by Standard of any provision of this agreement, Consignee shall give Standard written notice of any such breach and Standard shall have five (5) days within which to comply with the provisions breached. If said breach is not corrected within said five-day period, Consignee may at its option terminate this agreement by giving Standard twenty-five (25) days' notice thereof in writing.

Any of the following shall be deemed a breach of this agreement upon which the party not affected thereby may at its option terminate this agreement immediately by giving the other party written notice of termination; the appointment of a receiver to take possession of all or substantially all of the assets of either party, whose appointment is not vacated within sixty (60) days; either party's becoming insolvent or committing any act of bankruptcy; either party's making a general assignment for the benefit of creditors, or any action taken or suffered by either party under any insolvency or bankruptcy act.

Waiver by either party of any breach of any provision hereof by the other party shall not be deemed to be a waiver of any subsequent or continuing breach or a waiver of the breach of any other provision.

15. Upon any termination of this agreement, or at the expiration of its term, all of the products consigned hereunder that have not been sold shall be promptly redelivered to Standard, unless Consignee elects to purchase the same by written notice of such election given to Standard within ten (10) days after such termination or expiration. If Consignee elects to make such purchase, Consignee shall pay Standard as the price of such products an amount determined under the provisions of Exhibit "A" as though such products had been sold by Consignee upon the date of termination or expiration. If Consignee does not elect to make such purchase, the expense of redelivering such products to Standard shall be borne by Standard if the occasion for the redelivery is a termination by Standard under Paragraph 4; but if the occasion for such redelivery is a termination of this agreement under Paragraph 14, such expense shall be borne by the party whose breach resulted in termination by the other party. If the occasion for such redelivery is the expiration of the term of this agreement or a termination by Standard under Paragraph 7 hereof, or any termination hereof not hereinbefore enumerated, such expense shall be borne by Consignee.

16. If and whenever products consigned hereunder shall contain tetraethyl lead or other antiknock compound or compounds, this agreement shall be subject to all provisions contained in any agreement or agreements under which Standard is licensed to use such compound or compounds and to sell products containing the same. Consignee agrees to comply with such provisions insofar as they affect Consignee. If Consignee shall fail or refuse to so comply, Standard may suspend deliveries of the products affected by such license or licenses during the period of such failure or refusal.



17. This agreement shall extend to and be binding upon the successors and assigns of Standard and Consignee, provided, however, that no voluntary or involuntary assignment hereof shall be made by Consignee without the written consent of Standard, and no such assignment shall be made by Standard without the written consent of Consignee.

18. In the event that Standard is unable to make deliveries hereunder due to fire, riot, labor disturbances, earthquakes, acts of any government, whether foreign or domestic, Federal, State, County or Municipal, accidents, total or partial failure of transportation or delivery facilities or supplies, or shortage of products deliverable under this agreement due to shortage in the supply of crude oil or natural gas produced in the State of California, or any cause beyond its control, whether similar to the foregoing causes or not, the obligation of Standard to make deliveries during the period of such disability shall not be reduced or suspended except on a pro rata basis with sales or deliveries to others, and Consignee shall have the right to purchase from other sources such quantities of petroleum products as may be necessary to fill the requirements of Consignee's trade during such time as Standard's said disability may continue.

19. It is hereby mutually agreed that if at any time or from time to time during the life of this agreement Lee G. Powell, Clyde A. Perkins, Harris Distributing Company, or Harris Oil Company, hereinabove collectively called "Consignee", should severally, individually or jointly, as the case may be, desire to sell all or a major portion of his, its, or their interests in any or all property (either real or personal and including good will, accounts receivable and other intangible assets) then used by them, either jointly or severally, in the distribution or sale of said products hereunder, Standard shall have the prior right to purchase such interests. If they or any of them either jointly or severally receive from a third party an acceptable bona fide offer to buy such business or a major part thereof, the person or persons desiring to sell shall furnish Standard with good and sufficient evidence, satisfactory to Standard, of the title to such interests proposed to be sold, and Standard shall have thirty (30) days from the receipt of said notice, written confirmation, and evidence to purchase the property involved at the terms of such offer or at such lesser terms as such person or persons and Standard may agree upon.

20. Lee G. Powell, Clyde A. Perkins, Harris Distributing Company, and Harris Oil Company, hereinabove collectively referred to as "Consignee", shall each be severally, individually and jointly bound by and liable for the performance of all the terms, conditions and provisions of this agreement.

In the event the breach of any of the provisions of this agreement shall be occasioned by any one or more of the parties herein collectively called "Consignee" and such breach shall not be corrected by such person or persons hereinafter called "Defaulting Party" within the time provided in paragraph 14 hereof, then Standard may, at its option, terminate this agreement insofar as such Defaulting Party is concerned by giving such Defaulting Party twenty-five (25) days' notice thereof in writing, but this agreement shall remain in full force and effect with respect to the person or persons not causing such breach, hereinafter called "Remaining Parties", provided such breach is corrected by such Remaining Parties, if it is possible for the Remaining Parties to correct such breach, within five (5) days after the time the Defaulting Party should have corrected such breach, and thereafter the Remaining Parties shall be deemed to constitute the persons herein collectively called "Consignee" excepting that the operating consignment specified in paragraph 6 shall be appropriately reduced and the specified gallonage set forth in paragraph 7 hereof for the respective products shall thereupon be reduced respectively in amounts equivalent to the respective quantity of products delivered to Consignee hereunder sold by such Defaulting Party in the preceding contract year, if a full contract year has run under this agreement, or, if such breach occurs prior to the running of a full contract year, the specified gallonage set forth in paragraph 7 hereof for the respective products shall thereupon be reduced respectively in amounts equivalent to the respective average monthly quantity of products delivered by Consignee hereunder sold by such Defaulting Party during such period multiplied by twelve. That portion of the operating consignment which is charged to the Defaulting Party shall be redelivered to Standard at such Party's expense unless such party elects to purchase the same and pay the price therefor as provided in paragraph 15 hereof.

21. This agreement shall, as of the commencement date of the term hereof, terminate and supersede that certain Consignment Agreement between the parties hereto, dated April 6, 1953, as amended from time to time, and all other written agreements or oral agreements between the parties hereto, covering the sale and purchase of petroleum products or covering the consignment of petroleum products for sale in the area covered by this agreement.

22. Standard shall in no event be involved in the allocation of operating consignment or consignment replacement quantities between the parties collectively called Consignee, such allocation being entirely under their own control; however, if at any time there shall be any conflict among the parties collectively called Consignee affecting any performance or other action by Standard, Standard may refuse to act until it receives the joint written request of all such parties, but if it elects to act upon the request of any one or more of them it may do so without the consent of the other party, or parties, as the case may be.

23. All notices hereunder shall be in writing. Notices to Standard shall be addressed to it at 225 Bush Street, San Francisco 20, California. Notices to Consignee shall be addressed to it as follows:

Lee G. Powell  
Clyde A. Perkins  
Harris Distributing Company  
Harris Oil Company  
Box 5694, Kenton Station  
Portland Oregon

Copies of any notice by Standard shall also be sent to Lee G. Powell, 6715 East Highland Drive, Vancouver, Washington, and Clyde A. Perkins, P.O. Box 59, Vancouver, Washington.

IN WITNESS WHEREOF, this agreement is hereby signed by the parties hereto.

STANDARD OIL COMPANY OF CALIFORNIA, Standard

By E. O. Burns

By Leo G. Powell

Leo G. Powell

Consignee

By Clyde A. Perkins

Clyde A. Perkins

HARRIS DISTRIBUTING COMPANY

By H. R. Harris

HARRIS OIL COMPANY

By H. R. Harris

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EXHIBIT "A"

Commissions to be paid by Standard to Consignee for selling products consigned under agreement dated July 16, 1956, shall be determined, and Consignee's payment to Standard of proceeds of Consignee's sales shall be made as follows:

For the purpose of simplifying the accounts to be maintained by Consignee, Standard agrees to accept, subject to the conditions hereinafter stated, accounting by Consignee as follows:

On or before Wednesday of each week, Consignee shall account for and pay over to Standard the proceeds of sales by Consignee during the previous calendar week as though sales of consigned products had been made during each week by Consignee in the amount and on the dates on which Consignee received replacement deliveries of consigned products; provided, however, Standard shall have the right on any notice to Consignee, immediately to have such accounting and payment at the time of each replacement delivery.

If Standard becomes dissatisfied with such method of accounting and payment, it may, upon sixty (60) days' written notice to Consignee, require Consignee to deliver to Standard statements and accounts and pay to Standard, at the time or times hereafter designated by Standard, on the basis of actual sales by Consignee.

Notwithstanding anything contained herein, it is agreed that in any case in which the price at which Consignee is authorized to sell a product has changed between the date of Consignee's actual sale and the date of the replacement delivery, and in any case in which Consignee makes a sale without ordering a replacement delivery, as provided in paragraph 6 of the annexed agreement, Consignee shall account and pay to Standard upon the actual sale based upon the applicable amount, as established below, in effect upon date of actual sale.

The amount at which Consignee shall account to Standard for products consigned hereunder shall be the applicable amount set forth below, and the commission for each sale shall be the difference between the price at which the sale is made and such applicable amount.

## I. Definitions:

Not Tank Truck Price

"Not tank truck price" shall be deemed to be Standard's lowest posted delivered by tank truck price for the particular product to Jobbers generally, excluding all taxes, in effect at the particular Standard supply point involved at time of consignment delivery.

II. In the case of consignment deliveries of all products hereunder, the applicable amount shall be the said not tank truck price for the particular product in effect at the Standard supply point involved, at time of consignment delivery, less the following adjustments:

(a) S.O. JOBBER GASOLINE (FIRST BRAND)	4.00% per gallon.
S.O. JOBBER GASOLINE (SECOND BRAND)	3.50% per gallon.
S.O. JOBBER KEROSENE	3.50% per gallon.
S.O. JOBBER STOVE OIL	3.75% per gallon.
S.O. JOBBER DIESEL FUEL	3.00% per gallon.
S.O. JOBBER FURNACE OIL	3.00% per gallon.
S.O. JOBBER AUTOMOTIVE DIESEL FUEL	2.00% per gallon.

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(b) The basic adjustments shown in II (a) above may be subject to adjustment for each contract year, from and after the contract year ending August 31, 1957, by the following:

Either party shall have the right to request a meeting with the other party to discuss renegotiation of the additional adjustments, if any, to be in effect for each ensuing contract year beginning after August 31, 1957, by giving written notice to the other party at least 15 days prior to the preceding June 1. After any such notice, the parties shall meet at a place and time mutually agreed upon during the three-month period following June 1, but in any event the parties agree that at least one such meeting shall be held within the first thirty (30) days of such three-month period.

If after any such request for a meeting no agreement as to additional adjustments applicable to the immediately ensuing contract year can be reached on or before the last day of such three-month period, then, notwithstanding anything in said agreement to the contrary, said agreement shall automatically terminate six (6) months after the end of such three-month period. Additional adjustments during such six (6) month period shall be those in effect hereunder on the last day of the renegotiation period involved.

If no such request for renegotiation is made prior to June 1 of a year, there shall be no additional adjustments applicable hereunder for the ensuing contract year, subject, however, to subsequent renegotiations for later contract years as hereinabove set forth.

### III. Stops

Standard shall not be obligated to make deliveries of the particular product involved to Consignee hereunder while the applicable amount, as determined hereunder, after application of all adjustments for such product at the particular supply point involved under paragraph II above, and any other adjustments, is less than the following:

	Millbridge Ex All Taxes - Per Gallon
S.O. JOBER GASOLINE (FIRST BRAND)	12.04
S.O. JOBER GASOLINE (SECOND BRAND)	10.0
S.O. JOBER KEROSENE	12.5
S.O. JOBER STOVE OIL	9.0
S.O. JOBER DIESEL FUEL	8.0
S.O. JOBER FURNACE OIL	8.0
S.O. JOBER AUTOMOTIVE DIESEL FUEL	10.0

Whenever Company's posted net tank truck price for a product listed above is increased or decreased, a corresponding upward or downward adjustment shall be made in the applicable stop price for such product, but in no event shall said stop price be lower than the stop price in effect on the date hereof for the particular product involved.

It is further understood that while a "stop" amount is operative for a particular supply point and product involved, Consignee will have the right to continued consignment deliveries of the product involved at such supply point, provided that the "applicable amount" for such deliveries of the product shall be the "stop" amount as operative at the supply point involved at time of delivery.

Notwithstanding the foregoing, during the time or times a particular "stop" amount is operative at a particular supply point of Standard, Consignee shall have the right to obtain from another supplier on a thirty-day supply arrangement the supplies of the particular product involved normally obtained from such Standard supply point; provided that such right shall not be effective during any periods when Standard elects to waive the "stop" amount involved. Such quantities of the product involved so purchased by Consignee from another supplier, if any, shall be accounted for when determining compliance by the parties hereto with the quantity obligations provided under paragraph 7 of said agreement.

IV. If Standard's "Net Tank Truck Price" for a particular product as defined in Section I, above, in effect at Millbridge, Oregon, is at any time or from time to time higher than the posted tank truck price of a majority of the following companies, to wit: Shell Oil Company, Inc., Union Oil Company of California, and Tide Water Associated Oil

Company, for similar deliveries of the particular product of like grade and quality at the same point to consumers generally, then within three (3) days from the date such lower price is posted by a majority of said companies, Standard shall meet such lower price than in effect by either (1) reducing its said price to such lower price, or (2) using such lower price in determining the "applicable amount" at which Consignee shall account to Standard hereunder for the quantity of such particular products sold by Consignee within the City of Portland. In no event shall Standard be required to make consignment deliveries hereunder when and during the time or times that the "applicable amount" established pursuant to this Exhibit "A" and as modified by this Section IV is below the "stop" for the particular grade of product involved specified in Section III hereof.

STANDARD OIL COMPANY OF CALIFORNIA, Standard

By E. V. Burns

By Lee G. Powell

Lee G. Powell

Consignee

By Clyde A. Perkins

Clyde A. Perkins

HARRIS DISTRIBUTING COMPANY

By H. R. Harris

HARRIS OIL COMPANY

By H. R. Harris

Date November 5, 1956

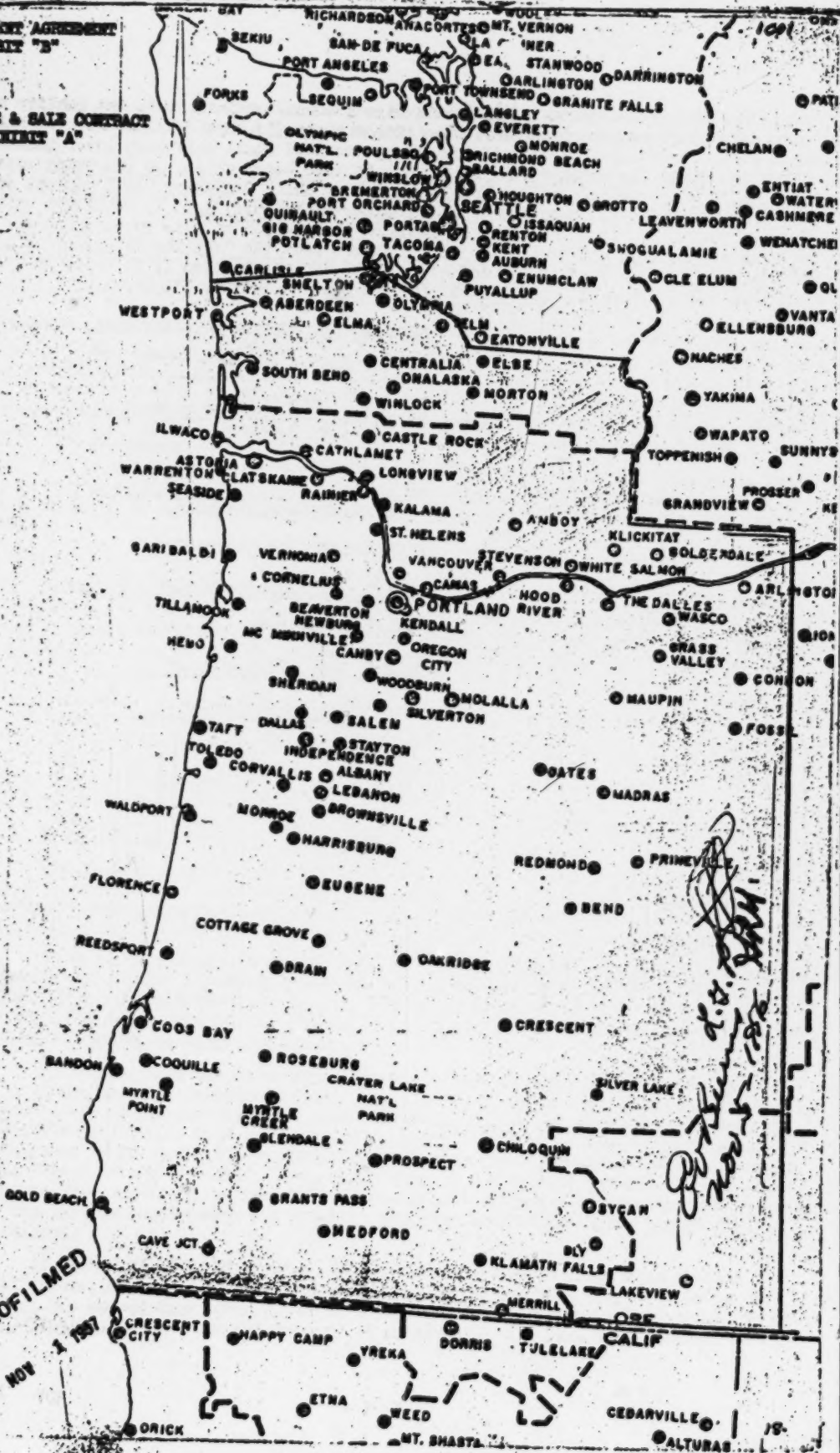
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NOV 1 1957

COMPROMISE AGREEMENT  
EXHIBIT "B"

PURCHASE & SALE CONTRACT  
EXHIBIT "A"

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Plaintiff's Exhibit No. 106-C







## Plaintiff's Exhibit No. 223

Exhibit	223
Case	3A-59
Date	Recd
	Clerk

Original

C. A. PERKINS

d.b.a.

C. A. PERKINS COMPANY - real estate

BALANCE SHEET  
December 30th, 1957

Quick Assets

Cash in bank	10,451.28
Cash in savings accounts	19,000.00
Check returned	38.94
Petty Cash	50.00
Notes Rec - P O W	14,443.03
Notes Rec - P O O	2,854.24
Accounts & Notes Rec (see schedule)	76,696.65
Deposits Receivable	62.50
Special deposit	10,000.00

133,596.64

Fixed Assets

White Salmon bulk plant	3,700.00
Roseburg bulk plant - Barcus	27,500.00
Vancouver bulk plant	102,000.00
Creswell bulk plant	4,500.00
The Dalles bulk plant	7,500.00
S & S Oil Company	11,825.31
22nd & G Street	6,000.00
Wilson Station - The Dalles	18,008.89
Skolas land	1,000.00
Ridgefield Junction	28,539.95
Husum corner	15,227.24
Washougal Station	20,934.20
Al Geiger	2,200.00
30th & St. Johns	12,748.01
\$ Corner Tavern	18,602.44
Co-op Station - Camas	5,000.00
26th & Kauffman	27,268.79
Three Corner Store	8,500.00
Lane Corner Store	12,500.00
Caskey Store	12,921.57
Land - Barnes	3,000.00
Company cars	3,623.85
Boat "Ethelwyn" & boathouse	14,122.40
Boat "Cyrnar"	21,318.00
Macmillan plant	8,065.23
Pumps	1,029.90
Sutherland - 7th & V	15,000.00
McIlvenna land	1,500.00
Shafer land	1,054.53
Thomas - Astoria	21,448.00
Residence	45,126.60
Powell - Roseburg	35,595.09
Briggs - land	3,750.00
Roseburg plant tanks	4,603.14
Champion sign at Centralia	2,879.38
Camas Station - 3rd & Franklin	5,866.84
Astoria lot	7,500.00

542,009.36

TOTAL ASSETS

\$ 675,606.00

LIABILITIES AND NET WORTH  
December 31, 1957

Liabilities

Standley payment	100.00
Misc. notes payable (see schedule)	42,247.39
Reserve for depreciation	83,726.06
Owner's Surplus	502,525.95
Note payable to C. A. P.	3,000.00
C. A. Perkins (drawing)	<u>(7,325.80)</u>

Total liabilities and capital	624,273.60
Income 1957	<u>51,332.40</u>
	<u>\$ 675,606.00</u>

Operating Statement  
December 31, 1957

Income:

	Oregon	Washington	
Rentals	17,265.00	30,461.08	47,726.08
Interest	1,067.49	1,795.95	2,863.44
Norm Jarvis Int.			480.06
Christenson lot sold			500.00
Non-taxable income			6,186.01
Sale of Meadow Glade			6,200.00
Sale of Betty apartment			<u>16,693.87</u>
			80,649.46

Expenses:

Rent			120.00
Interest	546.33	1,431.87	1,978.20
Taxes	1,330.58	4,346.18	5,676.76
Collection			6.00
Office			480.00
Insurance			3,412.13
Heat, light, water			2,210.27
Legal			373.37
Bldg maintenance	772.57	9,052.10	9,824.67
General expense			203.69
Contribution			2,407.00
Boat maintenance			<u>1,952.18</u>
Total expenses			29,317.06
Net income 1957			51,332.40

Notes Receivable

John Barnes	4,573.12
Tyler Penn	18,659.93
Grace Goon	75.00
Perkins Oil Co. of Oregon	1,115.26
Landreth - Meadow Glade	4,591.10
Perkins Oil of Wn.	5,083.44
Perkins Oil Co. (Don Raymond)	5,074.56-
Vancouver Yacht Club	300.00
Don Raymond	4,274.56
Robert Knepper	300.00
Alice Lewellen	1,900.00
Riley - Note on Betty apt.	33,048.72
Boyd Simmons	8,750.00

76,696.65

Notes payable

W. H. Lane	4,337.32
Alma Perkins	6,000.00
Vanc Fed Sav & Loan	377.63
Vanc Fed Sav & Loan	5,877.00
Elmer Perkins	4,500.00
First National Bank	800.00
Briggs-Powell	3,000.00
Alma Perkins	10,300.00
Ralph Roper	1,495.79
Sara & Ed Thomas	5,559.65

42,247.39



Perkins Oil Company of Washington  
Perkins Oil Company of Oregon  
SALES TO CUSTOMERS

CUSTOMER & LOCATION	PRODUCTS	1955										1956										1957									
		APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
KELSO, WASH. ROY SLATER	GASOLINE STOVE DIESEL PS 300	910 2,395 1,665	1,820 2,835 1,215	1,365 660 1,365	910 810 405	1,820 200 205	910 2,025 810	1,365 2,885 1,665	910 3,340 1,110	910 4,905 1,969	455 4,150 1,520	6,160 4,182 1,062	910 1,280 355	910 1,365 405	1,375 1,210 200	910	885 400	910 1,300 300	1,320 2,115 1,510	910 3,290 1,115	910 5,260 2,350	455 3,750 1,450	5,550 2,001 2,855	2,600 650 799	400 750				255 400 1,000	510 400	
LONGVIEW, WASH. BEN PULLEN CHAMPION	GASOLINE	13,970	13,970	20,955	14,521	20,955	13,970	21,399	13,972	16,814	13,970	13,970	10,505	14,788	14,604	21,251	14,604	13,951	13,348	13,997	14,604	14,604	13,997	14,604	7,302	13,390	13,390	20,085	13,288	13,288	13,288
OLYMPIA, WASH. MAXWELL OIL CO.	GASOLINE STOVE DIESEL					65,500 13,000 6,500	64,350 14,000 16,250	58,640 67,170 44,270	48,940 83,180 56,920	56,540 107,481 67,080	41,420 94,865 73,335	37,450 29,960												19,400		19,400		29,100	24,250	14,507	
STEVENSON, WASH. O.K. RUBBER WELDERS	GASOLINE													6,649	6,049	5,513	11,449	4,680	13,358	6,350	6,265	6,485		11,144	5,300	9,744	6,245	11,391	10,913	6,175	
WHITE SALMON, WASH. T.V. HATFIELD	GASOLINE																							2,000	2,144	4,613					
KARL MOORE	GASOLINE																														900
WEBSTER BROTHERS CHAMPION SERVICE	GASOLINE STOVE DIESEL				35,203 3,842 3,973	20,955	27,940	29,531	12,190	10,339	9,708	12,358	14,780	17,404	14,604	21,906	20,503	21,906	19,006	20,778	16,556	15,875	9,939	8,685	17,695	9,868	8,685	10,169	13,298		
ALBANY, OREGON PARIS B. BREEDLOVE	GASOLINE STOVE																				11,814 1,220				19,947	24,848 1,220	26,586	47,851	53,383	44,638 1,648	
GRACE'S SERVICE STATION	GASOLINE STOVE DIESEL PS 300	11,185 6,118 2,367	22,040 2,449 1,375	22,225 2,374 2,300	19,992 1,204	27,940 2,449	19,505 3,607	13,870 2,738	12,550 10,883	9,915 6,056	13,970 6,345	4,200 2,449	19,948 8,499	23,556 2,607	28,730 4,062	24,180 2,910	21,906 4,062	21,906 2,549	20,052 4,062	21,654 2,549	12,172 7,529	10,996 6,017	15,627 10,673	11,542 4,790	18,669 5,687	26,953 5,384	23,330 3,759	20,600 2,542	23,515 1,152	24,197 1,152	23,300 1,320
ASTORIA, OREGON PERKINS OIL CO. OF ASTORIA	GASOLINE DIESEL AUTO DIESEL	13,738	6,610	13,240	19,270	12,926	16,942	9,298	6,030	19,389	10,464	12,493	12,650	13,083	14,738	18,956 4,000	12,493 1,400	6,030	11,030	9,170	12,493	6,006									
DON'S CHAMPION SERV.	GASOLINE																					6,006			12,463	12,613	6,663	18,413	12,605	18,003	12,605
FRED'S CHAMPION	GASOLINE																														2,500
CANYONVILLE, OREGON LYNN BROS. CHAMPION FLEET SERVICE	GASOLINE															15,227	6,620	7,583	8,183	7,450	3,429	14,611		10,628	6,695	7,102	14,162	3,061	7,959	7,959	
CHEMULT, OREGON R.A. BRIGGS & SON	GASOLINE STOVE DIESEL		5,908	2,785	5,570	3,515	2,965	5,570	2,785						3,052	2,785	3,052	3,052	3,052	3,052											
COOS BAY, OREGON MID-OIL COMPANY	GASOLINE STOVE DIESEL	23,674	20,695	15,472	5,838	40,173	48,099	39,367	23,775	20,423	20,297	19,497	31,855	22,512	15,182	48,092	71,114 970	65,541	8,231	9,876	9,567	2,011	16,473	3,980		3,494	15,269				
									5,555	3,066	3,131	4,828	4,220								5,319	5,760	8,148		3,475	3,802	752				
CRESWELL, OREGON HOLLENHOR MOTOR CO.	GASOLINE STOVE DIESEL PS 300	20,990 8,619 9,200	29,998 7,652 5,767	21,382 2,160 1,369	32,285 3,818 4,609	35,367 1,080 2,008	24,030 4,609 4,898	25,300 8,567 5,916	15,407 10,836 5,978	26,520 14,797 8,443	14,185 14,499 9,349	22,263 15,632 10,681	28,675 12,925 8,211	24,852 8,421 5,904	26,984 3,759 4,807	28,498 3,814 4,007	31,815 1,230 2,705	23,115	31,408	22,378	18,267	16,007	16,552	20,321	18,671	31,917	28,821	25,907	29,284	23,030	23,400
CURTIN, OREGON S. ELWOOD	GASOLINE DIESEL AUTO DIESEL																	3,600	4,805												
GRANTS PASS, OREGON ROY GALLONAY	GASOLINE			14,667																											
R.C. MURRAY	GASOLINE				30,522																										
ISADORE ZINDA SERVICE STATION	GASOLINE					28,765	29,630	22,345	28,948	22,537	23,682	15,473	29,913	22,748	29,498	36,104	44,192	43,250	37,407	37,660	32,171	32,519	32,025	29,032	36,082	32,030	40,045	40,330	48,624	56,738	40,000

Perkins Oil Company of Washington  
Perkins Oil Company of Oregon  
SALES TO CUSTOMERS

& LOCATION	PRODUCTS	1955										1956										1957											
		APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV
WASH. TER	GASOLINE	910	1,820	1,365	910	1,820	910	1,365	910	910	455		910	910	1,365	1,375	910	885	910	1,320	910	910	455						255	510	765	510	
	STOVE	2,365	2,835	660	810	200	2,025	2,885	3,340	4,905	3,150	6,160	4,182	1,260	1,210	1,000		400	1,300	2,115	3,290	5,260	3,750	5,550	2,001	2,600	650	400	1,000	400	1,600	3,100	
	DIESEL	1,665	1,215	1,365	405	205	810	1,665	1,110	1,969	1,520	2,335	1,062	355	405	200			300	1,510	1,115	2,350	1,450	2,855	799	400	750				200		
	PS 300																																
WASH. LEN CHAMPION	GASOLINE	13,970	13,970	20,955	14,521	20,955	13,970	21,399	13,972	16,814	13,970	13,970	10,505	14,732	14,604	21,251	14,604	13,951	13,348	13,997	14,604	14,604	13,997	14,604	7,302	13,390	13,390	20,085	13,298	13,298	13,298	13,390	6,648
WASH. OIL CO.	GASOLINE					65,500	64,350	58,640	48,940	56,540	41,420														19,400		19,400		29,100	24,250	14,507	24,250	
	STOVE					13,000	14,000	67,170	83,160	107,481	94,965	37,450																					
	DIESEL					6,500	16,250	44,270	56,920	67,060	73,335	29,960																					
WASH. ROBER WELDERS	GASOLINE														6,649	6,049	5,513	11,449	4,680	13,358	6,350	6,265	6,485		11,144	5,300	9,744	6,245	11,391	10,913	6,175	14,777	4,500
WASH. FIELD	GASOLINE																									2,000	2,144	4,613					
ORE	GASOLINE																														900		
BROTHERS SERVICE	GASOLINE				35,203	20,955	27,940	29,531	12,190	10,339	9,708	12,358	14,790	17,404	14,604	21,906	20,503	21,906	19,006	20,778	16,556	15,875	9,939	8,685	17,695	9,868	8,685	10,169	13,298				
	STOVE				3,842			4,022	7,313	6,316	7,207	6,136	3,410	2,607			1,152		1,250	6,105	2,410	7,968	7,912	2,542	6,275	1,700							
	DIESEL				3,973			1,080	950	2,614	2,387	1,369	2,300	1,307					1,250	1,152	1,152	2,444	1,220	1,220		1,705							
OREGON BREEDLOVE	GASOLINE																																
	STOVE																																
SERVICE	GASOLINE	11,185	22,040	22,225	19,992	27,940	19,505	13,670	12,550	9,915	13,970	4,200	19,948	23,556	28,730	24,180	21,906	21,906	20,052	21,654	12,172	10,096	15,627	11,542	18,669	26,953	23,330	20,600	23,515	24,197	23,306	16,290	17,209
	STOVE	6,118	2,449	2,376		2,449	3,607	2,738	10,883	6,056	6,345	2,449	8,499	2,607	4,062	2,910			4,062	2,549	7,529	6,017	10,673	4,790	5,687	5,384	3,759						
	DIESEL	2,367	1,375	2,300	1,204		3,756	3,529	2,387	3,529	5,767		4,631	2,300	2,607	1,455			3,759	3,552	6,327	3,822	5,874	2,644	4,774	4,722	1,250						
	PS 300	177,276																															
OREGON OIL CO. OF A	GASOLINE	13,738	6,810	13,240	19,270	12,926	16,342	9,298	6,030	19,389	10,464	12,483	12,650	13,083	14,738	18,956	12,483	6,030	11,030	9,170	12,483	6,906											
	DIESEL							3,352								4,000	1,400																
	AUTO DIESEL						2,927																										
CHAMPION SERV.	GASOLINE																																
CHAMPION	GASOLINE																																
E, OREGON S. CHAMPION SERVICE	GASOLINE																15,227	6,620	7,883	8,183	7,450	3,429	14,611		10,628	6,695	7,102	14,162	3,061	7,959	7,959	7,338	
OREGON EGGS & SON	GASOLINE		5,908	2,785	5,570	3,515	2,965	5,570	2,785						3,052	2,785	3,052	3,052	3,052	3,052													
	STOVE						2,449																										
	DIESEL		13,678	9,663		3,650	13,043	3,607							3,600	9,338	3,400		3,600	9,607												6,207	
OREGON COMPANY	GASOLINE	23,874	20,895	15,472	5,838	40,173	48,099	39,367	23,775	20,423	20,297	19,487	31,855	22,512	15,182	46,092	71,114	65,541	8,231	9,876	9,567	2,011	16,473	3,990		3,494	15,269						
	STOVE								5,555	3,066	3,131	4,828	4,220																				
	DIESEL																970				5,319	5,760	8,149			3,475							
OREGON MOTOR CO.	GASOLINE	20,990	29,998	21,382	32,285	35,367	24,030	25,300	15,407	26,520	14,185	22,263	28,675	24,852	26,984	28,498	31,815	23,115	31,408	22,378	18,267	16,007	16,552	20,321	18,671	31,917	28,821	25,907	29,284	23,030	23,467	19,855	21,983
	STOVE	8,819	7,652	2,160	3,818	1,080	4,609	8,567	10,836	14,787	14,499	15,632	12,925	8,421	3,759	3,814	1,200		5,005	7,357	16,244	12,244	19,990	14,210	12,205	6,329	2,372	1,152	2,552	1,705	1,220	6,797	6,797
	DIESEL	9,200	5,767	1,389	4,609	2,008	4,898	5,916	5,978	8,443	9,349	10,681	8,211	5,904	4,907	4,007	2,705	1,455	5,672	3,955	8,808	5,025	11,326	8,836	6,417	2,644	3,570	6,675	1,220	2,675	1,322	5,332	5,332
	PS 300		5,238	2,461					5,295			5,183		5,183		5,890																	
OREGON	GASOLINE																																
	DIESEL																																
	AUTO DIESEL																																
E, OREGON MAY	GASOLINE			14,607																													
MAY	GASOLINE				30,522																												
INDIA STATION	GASOLINE					28,785	29,630	22,945	28,948	22,537	22,682	15,473	29,913	22,748	29,488	36,104	44,192	43,250	37,407	37,660	32,171	32,819	32,025	29,032	36,082	32,030	40,045	40,330	48,634	56,733	40,520	40,228	40,063



Perkins Oil Company of Washington  
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SALES TO CUSTOMERS

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CUSTOMER & LOCATION	PRODUCTS	1955										1956										1957														
		APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV			
WOOD RIVER, OREGON E. YERN GREEN	GASOLINE STOVE DIESEL						4,455												26,146 8,220 7,952	23,289 5,084 4,286	24,834 5,942 2,706	16,612 1,250 12,042	12,786 2,542 3,046	5,422 177 4,320	12,027 1,000	9,414										
M.W. PEWITT CHAMPION FLEET	GASOLINE STOVE DIESEL																									20,683 200 5,674	10,439									
VALLEY FLEETWAY SERVICE	GASOLINE STOVE																											16,586 7,717 1,220	19,274							
MID-COLUMBIA OIL CO.	GASOLINE STOVE DIESEL																													14,296 1,220 1,322	15,083 1,322 2,542	12,980 3,640				
J.B. EDINGTON'S PLUMBING & HEATING	STOVE DIESEL AUTO DIESEL		1,369 4,687																																	
JEFFERSON, OREGON ED GLEASON SERVICE STATION	GASOLINE STOVE DIESEL	5,535 1,307	1,369	4,235 2,300									9,641 3,679	6,500 1,000	4,502 2,350	4,602 2,350	6,485 6,485	6,650	7,302			5,165 1,220	7,007	1,676 1,152	7,405	5,004 1,322	3,520 2,542	6,175	7,302	6,458	6,221					
MYRTLE POINT, OREGON MYRTLE POINT OIL CO.	GASOLINE STOVE DIESEL AUTO DIESEL	13,872 7,810 5,006	12,716 2,716 11,216	19,382 2,578 15,009	17,034 2,716 13,014	25,000 1,358 14,037	19,292 4,343 5,608	14,724 3,190 4,659	15,952 6,375	17,995 5,066 2,340	9,584 1,695	11,182 2,518	11,522 4,892	14,347 8,247	19,166 7,812	18,847 4,748	15,705 10,350	17,846 11,089	20,413 6,037	15,872 5,755	11,482 7,432	11,763 8,389	16,756 11,256	7,762 8,726	17,224 5,158	20,546 3,398	15,322 1,698	22,324 1,698	21,602 3,398	25,634 3,398	18,113 3,608	14,674 4,916	15,698 4,916			
NEWPORT, OREGON E.A. WHITE	GASOLINE DIESEL																									4,740 1,645	4,740 1,645	16,129 3,290	14,908 4,167	11,389 1,645	9,480 3,290	11,151 1,645				
PORT ORFORD, OREGON DONALD SHONES	GASOLINE STOVE																									7,762	7,623	7,621	15,568	15,524	8,077	6,360 893				
RIDDLE, OREGON RIDDLE PLANT, PERKINS OIL CO. OF ROSEBURG	GASOLINE STOVE DIESEL																	11,169 3,000	5,400 5,475 3,900	6,649 5,588	9,309 6,753 2,350	19,254 7,200 3,100	8,856 2,807 3,007													
DONALD SHONES	GASOLINE STOVE DIESEL	15,585 3,150 3,825	23,099	16,329	30,302	40,334 4,026 6,393	24,038 7,110 6,393	40,048 7,297 3,147	36,080 9,779 2,715	32,056 16,582 3,795	47,238 12,453 4,228	23,782 12,174 8,864	43,070 12,174 8,864	44,896 2,607 3,000	51,777 2,607 3,000	55,255 9,157	36,358 7,050	29,455 12,414	17,907 3,600																	
ROGUE RIVER, OREGON LAFFING GAS SERVICE (R.S. GREEN)	GASOLINE																				7,302		8,150	14,966	8,063	8,000	6,649	8,150	8,104	16,206	16,205	15,468	15,311			
ROSEBURG, OREGON PERKINS OIL CO. OF ROSEBURG	GASOLINE STOVE DIESEL AUTO DIESEL	41,405 4,434 18,190 2,440	63,183 12,395 5,242	68,253 20,619 2,070	64,997 16,887 6,768	77,898 25,668 3,678	44,412 9,826 1,220	35,128 3,244 2,715	37,449 3,205 2,950	38,356 6,657 1,220	62,616 4,870 2,458	27,006 4,870 1,220	44,240 1,705 8,822	40,348 1,705 11,787	38,254 1,705 9,843	48,089 11,367	35,888 13,063	47,044 1,220 13,063	43,360 50,693 4,294 5,153	26,226 8,062 5,972	7,302 6,520 7,414	27,207 5,690 8,130	29,955 3,582 14,595	27,851 27,001 24,343	36,791 500 1,322	27,001 1,322 3,864	24,343 9,424 12,299	34,684 4,752 5,055	21,942 4,752 4,922	17,003 3,907 4,922	19,601 3,907 12,688	20,788 3,756 12,688				
BARCUS SALES & SERV.	GASOLINE STOVE DIESEL					11,055 3,165 3,390															15,027 10,189 1,220 1,322	12,467 12,501 1,250	12,501 1,322 2,409	5,004 11,730 6,904 11,414	6,904 11,414 7,302	6,649 12,786 4,502 6,649										
DALLAS BENNETT	GASOLINE STOVE DIESEL																									8,133 4,368	10,404 3,542	13,360 7,129	11,587 3,531	11,727 10,273	6,258 2,644	10,006 5,653	5,929 10,800	13,406		
DON ROGAN	GASOLINE STOVE DIESEL																									7,848 2,978 5,270										
G.P. VAN HORN	GASOLINE																									6,644 6,649	6,645 7,906	7,904	9,532	10,958	12,852	5,900	5,104	3,520	9,778	13,880
ROSEBURG WOOD PROD.	PS 300									12,312			13,110																							
SUTHERLIN, OREGON ROYT MEDFORD SERVICE STATION	GASOLINE DIESEL													30,269 20,140 1,455	30,301 21,902 2,500	37,238 5,052 2,500				7,302	8,000	8,150	6,649	4,500 3,007												
SWEET HOME, OREGON STOKES TRUCKING CO.	GASOLINE DIESEL	25,318 3,678	23,823 6,724	26,525	18,185 2,449	25,155 8,505	26,010 7,958	31,510 14,962	11,970 7,683	21,835 11,276	12,358 7,456			15,604 6,027	16,270 11,121	15,902 11,421	5,628 7,662	22,408 23,006	10,999 8,195	14,902 17,284	10,236 15,582	3,129 3,046			6,181 7,902	11,562 15,021	3,052 9,907	15,360 18,002	12,414	6,184 18,614	12,980 3,640					

Perkins Oil Company of Washington  
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SALES TO CUSTOMERS

CUSTOMER & LOCATION	PRODUCTS	1955										1956										1957											
		APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV
PORTLAND, ORE. CHAMPION OIL CO.	GASOLINE				22,477																												
	DIESEL	21,591	15,755	64,312	8,114																												
COLUMBIA TRANSPORT, INC.	GASOLINE																																
	DIESEL	6,364																															
PLAY SILLIMAN	GASOLINE																			15													
INTERSTATE SERVICES, INC.	GASOLINE	5,515	6,235	3,650	7,650	9,989	7,896	5,308	3,625	4,200	9,236	2,515	3,129																				
	STOVE																																
	DIESEL	6,607	9,450	5,791	90,819	13,867	11,029	8,264	3,000	2,449										1,000													
	PS 300			25,700	12,362																					102							100
HARRISON OIL CO.	GASOLINE																																
PORTLAND MOTOR TRANSPORT	GASOLINE																																
	DIESEL															1,000																	
																2,607																	
												</																					



Perkins Oil Company of Washington  
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SALES TO CUSTOMERS

CUSTOMER & LOCATION	PRODUCTS	1955										1956										1957											
		APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV
THE DALLES, OREGON																																	
MUSSEY HEATING OILS	GASOLINE	9,940	12,528	12,305	12,102	11,725	12,813	15,042	10,812	19,307	11,955	5,779	20,538	8,308	19,403	13,448	6,243	14,413	4,580														
	STOVE	5,978		1,086				5,978	12,399	12,425		15,404	4,624		1,455			5,137															
	DIESEL	1,307		1,389				4,976	10,877	3,607		8,634			1,152			3,686															
BERT PEPPER CHAMPION	GASOLINE																	17,648		6,650	22,075	8,678	11,075	12,331	19,286	12,657							
	STOVE																	9,682				1,455	2,458										
	DIESEL																	2,534															
PERKINS OIL CO.	GASOLINE																									15,183							
THE DALLES STATION	GASOLINE																										9,424	10,751	10,685	7,296			
TERREBONNE, OREGON																																	
GREAT LAKES CARBON CORPORATION	GASOLINE		6,011			6,985				8,058																							
	DIESEL		6,364		8,700	6,056	3,755	3,755	6,393		6,393	6,393																					
	PS 300	222,858		166,617	133,935	151,885	158,199	118,049	136,817	358,912	163,782	38,788																					
WINSTON, OREGON																																	
DONALD SHONES	GASOLINE																			8,648	13,298	15,439	19,947	13,951	28,094	23,969	30,611	21,204	15,014	14,708	15,535	9,725	15,510
	STOVE																														802	800	
OTHER OREGON & WASHINGTON																																	
PERKINS & LENNINGTON	GASOLINE							35,335																									
CHAMPION FLEET SERVICE	STOVE							1,784																									
	DIESEL							13,302																									
WHITE CONSTRUCTION COMPANY	GASOLINE			3,601		3,600	3,123						2,885	2,885	2,885	1,428	5,178																
	DIESEL					15,185	10,071						3,935	3,404	10,328	5,173	5,028																

SOURCE: EXRS. 284-A AND 284-B





Exhibit	1007
Case	369-591
Rptr	
Date	Clerk

## Plaintiff's Exhibit No. 321

Exhibit	321
Case	369-591
Rptr	
Date	Clerk

AGREEMENT

THIS AGREEMENT, dated July 1, 1947, between STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation, hereinafter referred to as "Standard," and SIGNAL OIL AND GAS COMPANY, a Delaware corporation, hereinafter referred to as "Signal,"

## W I T N E S S E T H:

1. Standard agrees to sell to Signal and Signal agrees to buy from Standard, subject to the terms and conditions hereinafter provided, Signal's trade requirements of motor gasoline for marketing under its brands and/or copyrighted and/or trade-marked names in the States of California, Oregon, Washington, Idaho, Nevada and Arizona. The products to meet Signal's requirements hereunder shall be Standard's regular commercial grades of motor gasoline, equivalent to the grades currently supplied by Standard to its dealer trade (which at the date hereof are First Brand Gasoline (Ethyl or Premium grade) and Second Brand Gasoline (Regular grade)).

2. The term of this agreement shall be for the period commencing with the date hereof and continuing until terminated by either party's giving six (6) Months' prior written notice to the other party, except that no such notice shall be given prior to July 1, 1953.

3. Standard will deliver gasoline, on orders from Signal, in fairly even monthly quantities to the extent of Signal's trade requirements as aforesaid, provided, however, that Standard shall not be obligated to deliver to Signal in any four successive calendar months' period during the term hereof (hereinafter called the "period of supply") a quantity of gasoline in excess of the higher of the quantities determined in accordance with (a) and (b) below:

(a) The quantity of gasoline contained in the crude oil, in excess of 5,496,000 barrels of crude oil, sold to Standard by Signal during the four calendar months immediately preceding the last calendar month of any period of supply under the Crude Oil Purchase Agreement dated July 1, 1947, between the parties hereto, plus the quantity of natural gasoline, in excess of

11,040,000 gallons of natural gasoline, sold to Standard by Signal during the four calendar months immediately preceding the last calendar month of any period of supply under the Natural Gasoline And Propane Purchase Agreement dated July 1, 1947, between the parties hereto. For the purposes of this subparagraph (a), the gasoline content of crude oil shall be deemed to be 30.3 per cent;

(b) The quantity of gasoline contained in the crude oil, in excess of 5,496,000 barrels of crude oil, sold to Standard by Signal during the four calendar months immediately preceding the last calendar month of any period of supply under the Crude Oil Purchase Agreement dated July 1, 1947, between the parties hereto. For the purposes of this subparagraph (b), the gasoline content of crude oil shall be deemed to be 32.9 per cent;

provided further, however, that in no event shall Standard be obligated to deliver to Signal in any calendar month during the term hereof a quantity of gasoline in excess of the following:

During the period July 1, 1947, to June 30, 1948, 3,000,000 gallons; during the period July 1, 1948, to June 30, 1949, 4,000,000 gallons; thereafter, during the term hereof, 6,000,000 gallons.

4. Deliveries of gasoline shall be made in bulk, minimum 2,500 gallons per delivery, into transportation facilities to be furnished by Signal f.o.b. Standard's base supply points as named below, and in each instance the respective base supply point shall be the point of supply for Signal's requirements for the market area supplied by Standard from such point in its own direct operations:

Base Supply Points

El Segundo  
Seguro  
Richmond  
Willbridge  
Point Wells

Provided, however, that in the event Standard, in its own direct operations, changes the base point of supply, Standard, at its option, may make a corresponding change in the base point of supply for Signal.

Provided, further, Signal at its option may take deliveries at Standard's intermediate marine terminals which are supplied by water from the base supply points named above, to the extent that Standard has supplies available at such intermediate terminals in excess of its own requirements, and subject to payment by Signal to Standard of a charge for such deliveries as quoted by Standard from time to time, which charge shall be reasonably competitive with going rates in the industry for such service.

5. (a) For each gallon of gasoline delivered by Standard to Signal, Signal shall pay to Standard Standard's posted current net tank truck price as effective at time and place of delivery, less a discount as hereinafter provided, except that for any deliveries at Standard's intermediate marine terminals the price for each gallon of gasoline delivered shall be the net price then applicable for deliveries of gasoline at the base supply point from which such marine terminal is supplied by water, plus the charge referred to in paragraph 4 hereof.

(b) Signal's discount on gasoline delivered hereunder shall be 5.50 cents per gallon on First Brand Gasoline and 4.50 cents per gallon on Second Brand Gasoline, provided, however, that in no event shall Signal pay to Standard for gasoline delivered hereunder less than the prices shown below:

EX RATES

<u>Base Supply Point</u>	<u>First Brand</u>	<u>Second Brand</u>
El Segundo	4.50¢ per gallon	4.00¢ per gallon
Richmond, Seguro	5.00¢ per gallon	4.50¢ per gallon
Willbridge, Point Wells	5.50¢ per gallon	5.00¢ per gallon

For deliveries at Standard's intermediate marine terminals the prices shall not be lower than the applicable minimum price for the base supply point from which such marine terminal is supplied by water, plus the applicable charge for such delivery referred to in paragraph 4 hereof.

6. Title to all gasoline sold hereunder shall pass to Signal at the supply points immediately upon the loading of the gasoline delivered at such supply points into the transportation facilities furnished by Signal and all risk of damage or loss from and after the passage of title shall be borne by Signal.

All moneys due from Signal to Standard for deliveries hereunder shall be payable by the 20th day of the calendar month following delivery.

7. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority, upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the gasoline, the subject matter of this agreement, shall, if collectible or payable by Standard, be paid by Signal on demand by Standard, as tax collectible or as an increase in the prices otherwise herein provided for.

8. It is understood and agreed that Signal in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Standard any right to control Signal with respect to its conduct in the performance of this agreement.

Signal undertakes and agrees that it will, at its own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said states covering all persons employed by and working for it in connection with the performance of this agreement.

Signal accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for it in connection with the performance of this agreement.

9. The waiver of any breach of any provision shall not be deemed to be a waiver of the breach of any other provision hereof, or any subsequent or continuing breach of such provision or provisions.



10. This agreement shall be binding upon successors or assigns of Standard and Signal; provided that no assignment shall be made by either party without the written consent of the other party, except that Signal may assign this agreement to a marketing subsidiary or affiliate.

11. In the event Standard is prevented from or hindered in making deliveries hereunder or that Signal is prevented from or hindered in receiving deliveries due to act of God, fire, riot, labor disturbances, earthquakes, war, commandeering of raw materials, products, plants or facilities, or by other similar or different acts of any government (whether foreign or domestic, federal, state, county, or municipal), accident, total or partial failure of transportation or delivery supplies or facilities, or any other cause beyond their control whether similar to the foregoing causes or not, the obligation of Standard to make deliveries and the obligation of Signal to receive deliveries during the period of such disability shall be suspended.

12. The term "gallon", when used herein, designates and is equivalent to two hundred and thirty-one (231) cubic inches.

In determining the net volume of gasoline delivered hereunder adjustment in volume to 60° Fahrenheit owing to difference in temperature shall be made in accordance with latest issue of Standard Abridged Volume Correction Table A.P.I. Standard No. 500 (A.S.T.M. designation No. 206).

13. Notices for Standard shall be addressed to it at 225 Bush Street, San Francisco, California. Notices for Signal shall be addressed to it at 811 West Seventh Street, Los Angeles.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers, who are hereto duly authorized.

STANDARD OIL COMPANY OF CALIFORNIA

By

W. H. H. H. H.  
Vice President,  
G. M. Foster  
Secretary

SIGNAL OIL AND GAS COMPANY,

By

B. B. B. B.  
President,  
H. J. H. J.  
Secretary

## Plaintiff's Exhibit No. 343-A

Exhibit	1453A
Case	369-59
Rptr	Recd
Clerk	

Exhibit	343A
Case	369-59
Rptr	Recd
Clerk	

## STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California

April 6, 1953

RETAIL PRICE ALLOWANCES  
CHEVRON DEALERS

## ALL DISTRICTS (except Honolulu):

Reference is made to our letter of December 12, 1950, subject: "Temporary Allowances - Chevron Dealers."

As a means of assisting Chevron Dealers to maintain a fair margin of profit in face of higher costs for labor and material, we are liberalizing the policy of assisting Chevron Dealers in competitive retail price situations, as follows:

1. Extend a temporary allowance based on the difference between Standard Stations, Inc., margins and 4.75 cents on Chevron and 5.25 cents on Esso. (This will be in addition to restricted allowances, if the dealer qualifies.)
2. Where Standard Stations, Inc., retail price is below 3 cents above tank truck, split the difference with the dealer below the 3-cent level.

Standard Stations, Inc., retail prices will be followed as a basis for allowances in those localities where they are represented. Consult this office regarding allowances to be extended in localities where Standard Stations, Inc., are not represented. Attached for your ready reference is a chart showing dealer allowances according to this new policy.

In view of this additional consideration to Chevron Dealers, and in order that special allowances will not prevail, where Chevron Dealers (except bona fide truck stations) receive a special allowance below tank truck, such as two-party dealers' extended allowances considered in lieu of rent for facilities owned or leased by the dealers, or where such allowances have been extended to meet a bona fide competitive offer either to retain or gain business, temporary retail price allowances referred to herein, which now or may be applicable from time to time in the future, will be reduced by an amount equal to all or any part of the special allowance below tank truck. Please discuss with us any exceptions to this policy you believe necessary.

4.75  
3.00  
1.75

This liberalized policy represents another excellent means of building continuing good will with our Chevron Dealers, especially as it is offered voluntarily by the Company. We feel that it is of enough importance to warrant explanation by a member of Management or Branch Managers to those Chevron Dealers in the localities where retail prices are depressed to the point that the allowances apply. However, we do not believe any discussion is advisable in any locality until such time as retail prices make the extension of these allowances necessary. Also, it is extremely important that this policy be kept on a confidential basis by our employees and those Chevron Dealers with whom the policy is discussed. As you can understand, it is to the best interests of our Chevron Dealers that our competitors do not learn of this policy, as they might extend further allowances to their dealers and establish a competitive advantage.

E. D. THOMPSON

Attachment

ALL OTHERS (EX HONORARI)  
(AREAS WHERE FIRST RICE ALLOWANCE IS EXTENDED)

FIELD  
LEADS  
TALK TRUCK

ALLOWANCE  
CHRONOM SUPPLEMENT

5.3	.0	.0
5.2	.0	.05
5.1	.0	.15
5.0	.0	.25
4.9	.0	.35
4.8	.0	.45
4.7	.05	.55
4.6	.15	.65
4.5	.25	.75
4.4	.35	.85
4.3	.45	.95
4.2	.55	1.05
4.1	.65	1.15
4.0	.75	1.25
3.9	.85	1.35
3.8	.95	1.45
3.7	1.05	1.55
3.6	1.15	1.65
3.5	1.25	1.75
3.4	1.35	1.85
3.3	1.45	1.95
3.2	1.55	2.05
3.1	1.65	2.15
3.0	1.75	2.25
2.9	1.85	2.35
2.8	1.95	2.45
2.7	2.00	2.50
2.6	2.05	2.55
2.5	2.10	2.60
2.4	2.15	2.65
2.3	2.20	2.70
2.2	2.25	2.75
2.1	2.30	2.80
2.0	2.35	2.85
1.9	2.40	2.90
1.8	2.45	2.95
1.7	2.50	3.00
1.6	2.55	3.05
1.5	2.60	3.10
1.4	2.65	3.15
1.3	2.70	3.20
1.2	2.75	3.25
1.1	2.80	3.30
1.0	2.85	3.35
.9	2.90	3.40
.8	2.95	3.45
.7	3.00	3.50
.6	3.05	3.55
.5	3.10	3.60
.4	3.15	3.65
.3	3.20	3.70
.2	3.25	3.75
.1	3.30	3.80
0	3.35	3.85

100%

50%

1-1-53



## Plaintiff's Exhibit No. 343-B

Exhibit	1453 B
Case	369-59
Rptr	Recd
Date	Clark

Exhibit	343 B
Case	369-59
Rptr	Recd
Date	Clark

1453 B

# STANDARD OIL COMPANY OF CALIFORNIA

## WESTERN OPERATING DIVISION

San Francisco, California  
November 5, 1956

### LIBERALIZED RETAIL PRICE ALLOWANCES - CHEVRON DEALERS

ALL DIVISION MANAGERS (EX HONOLULU):  
Salt Lake City Division - applies only to those  
Chevron Dealers in Nevada.

Confirming my telephone conversation today, as a further means of assisting Chevron Dealers to maintain a fair margin of profit in face of higher costs for labor and material and because of increasing price disturbances, we are liberalizing the policy of assisting Chevron Dealers during periods when prices are depressed.

By assisting Chevron Dealers to meet competition promptly, if they choose to do so, this liberalized policy represents another excellent means of building continuing good will with our dealers. Not only our Dealers but also Dealer Associations feel that margins approaching 6¢ are necessary if they are to continue in business profitably.

We feel this new policy is important enough to warrant personal explanation by a member of your organization to all Chevron Dealers, with particular attention being given to Chevron Dealers who are influential in local or state dealer associations. It is not our intention, however, to give this program any publicity with officers of Dealer Associations unless they are Chevron Dealers.

Company-operated station retail prices will continue to be followed as a basis for allowances in those localities where they are represented.

The attached table clearly shows the new schedule of Retail Price Allowances for all dealers. As memo figures only to assist you in dealer gross margin computations, two columns are shown on the right, indicating rest room allowances where applicable plus resulting gross margins at each margin level. No change is being made in the present method of paying rest room and maintenance allowances. This new table differs from the present one in use in that it covers allowances for both Chevron and Chevron Supreme in the same column. Read table for retail margin above T.T. for Chevron and any differing margin on Supreme.

We are further liberalizing our present policy wherein retail price allowances, except at bona fide truck stations, are not to be pyramided over special day-to-day allowances. Temporary retail price allowances will be reduced as at present by the amount of the special day-to-day allowance down to  $\frac{1}{2}$  of the special day-to-day allowance. (Example: 1.0¢ special day-to-day allowance in effect. Normal retail price allowance 1¢. This 1¢ is now to be reduced to  $\frac{1}{2}$  because of 1.0¢ special allowance.)



- 2 -

Please discuss with us any exceptions to this policy you believe necessary.

Effective immediately, you may apply this new policy of retail price allowances to the Chevron Dealers involved. From your records, please review those areas where Chevron Dealers are now receiving retail price assistance based on competitive postings so you may increase present allowances where justified on new basis.

It also will be necessary for you to review all presently established localities where Chevron Dealers are our only representation and where no allowances are being extended to determine present competitive postings below the new liberalized policy, and extend allowances based on the new schedule attached.

Consult this office regarding allowances to be extended in new localities where Company-operated stations are not represented and before any new retail price allowances are granted to Chevron Dealers.

E. D. THOMPSON

Amt.  
Retail Price  
Above Posted  
T.F.

Amt.  
Dealer  
Retail Price  
Allowance

Memo Figures Only Where Rest Room  
& Maintenance Allowances Are Paid  
Gross Margin  
to Dealer

R.R. & M.

6.04	-	.25	6.25
5.9	-	.25	6.15
5.8	-	.25	6.05
5.7	-	.25	5.95
5.6	.03	.25	5.88
5.5	.10	.25	5.85
5.4	.17	.25	5.82
5.3	.24	.25	5.79
5.2	.31	.25	5.76
5.1	.38	.25	5.73
5.0	.45	.25	5.70
4.9	.52	.25	5.67
4.8	.59	.25	5.64
4.7	.66	.25	5.61
4.6	.73	.25	5.58
4.5	.80	.25	5.55
4.4	.87	.25	5.52
4.3	.94	.25	5.49
4.2	1.01	.25	5.46
4.1	1.08	.25	5.43
4.0	1.15	.25	5.40
3.9	1.22	.25	5.37
3.8	1.29	.25	5.34
3.7	1.36	.25	5.31
3.6	1.43	.25	5.28
3.5	1.50	.25	5.25
3.4	1.57	.25	5.22
3.3	1.64	.25	5.19
3.2	1.71	.25	5.16
3.1	1.78	.25	5.13
3.0	1.85	.25	5.10
2.9	1.92	.25	5.07
2.8	1.99	.25	5.04
2.7	2.06	.25	5.01
2.6	2.13	.25	4.98
2.5	2.20	.25	4.95
2.4	2.27	.25	4.92
2.3	2.34	.25	4.89
2.2	2.41	.25	4.86
2.1	2.48	.25	4.83
2.0	2.55	.25	4.80
1.9	2.62	.25	4.77
1.8	2.69	.25	4.74
1.7	2.76	.25	4.71
1.6	2.83	.25	4.68
1.5	2.90	.25	4.65
1.4	2.97	.25	4.62
1.3	3.04	.25	4.59
1.2	3.11	.25	4.56
1.1	3.18	.25	4.53
1.0	3.25	.25	4.50
.9	3.35	.25	4.50
.8	3.45	.25	4.50
.7	3.55	.25	4.50
.6	3.65	.25	4.50
.5	3.75	.25	4.50
.4	3.85	.25	4.50
.3	3.95	.25	4.50
.2	4.05	.25	4.50
.1	4.15	.25	4.50
.0	4.25	.25	4.50

no  
Natural

Grading

## Defendant's Exhibit No. 1084, page 1

<b>FORM 1040</b> U.S. Treasury Department Internal Revenue Service	<b>U.S. INDIVIDUAL INCOME TAX RETURN</b> For Calendar Year or other taxable year beginning 1955, and ending 1955	<b>1955</b> <span style="font-size: 2em; font-weight: bold;">1084</span>
Name of individual or joint return of husband and wife, use first names of both: <b>C. A. and Elizabeth Perkins</b>		
Home address (number and street or rural route) <b>P. O. box 59</b> <b>532-34-1967</b>		City or post office (zone) <b>Vancouver</b>
State <b>Montana</b>		County <b>Clark</b>
Social Security number and other identification number <b>532-34-1967</b>		Social Security number and other identification number <b>Clark</b>
If income was all from wages, use Pages 1 and 2 Only. If such income was less than \$5,000, you may need to use Page 1 Only. See Page 3 of the instructions.		
<b>Exemptions</b>	1. Check blocks which apply. Check for wife if she had no income or her income is included in this return. Regular \$600 exemption <input type="checkbox"/> Yourself <input type="checkbox"/> Wife 65 or over at end of taxable year <input type="checkbox"/> Yourself <input type="checkbox"/> Wife Blind at end of taxable year <input type="checkbox"/> Yourself <input type="checkbox"/> Wife Enter number of hours checked <span style="float: right;">42 1/2</span> Enter number of children listed <span style="float: right;">2</span>	
<b>Income</b>	2. List names of your children who qualify as dependents, give address if different from your. 3. Enter number of exemptions claimed for other persons listed at top of page 2. 4. Enter the total number of exemptions claimed on lines 1, 2, and 3. 5. Enter all wages, salaries, bonuses, commissions, and other compensation received in 1955, before payroll deductions. Outside salesmen and persons claiming traveling, transportation, or reimbursed expenses, see instructions, page 5. Employer's Name _____ Where Employed (City and State) _____ Wages, etc. \$ _____ Income Tax Withheld \$ _____ 6. Less: Excludable "Sick Pay" in line 5. (See instructions, page 5. Attach required explanation.) \$ _____ 7. Balance (line 5 less line 6) \$ _____ 8. Profit (or loss) from business (from separate Schedule C) \$ _____ 9. Profit (or loss) from farming (from separate Schedule F) \$ _____ 10. Other income (or loss) from page 3 \$ _____ <b>11. ADJUSTED GROSS INCOME (sum of lines 7, 8, 9, and 10) \$ 22,385.31</b>	
<b>Special computation</b>	Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 14, and check here <input type="checkbox"/> Widows and widowers who are entitled to the special tax computation, see instructions, page 14, and check here <input type="checkbox"/>	
<b>Tax due or refund</b>	IF INCOME ON LINE 11 IS UNDER \$5,000, AND YOU DO NOT ITEMIZE DEDUCTIONS, USE TAX TABLE ON PAGE 16 OF INSTRUCTIONS. IF INCOME WAS \$5,000 OR MORE, OR IF YOU ITEMIZE DEDUCTIONS, COMPUTE YOUR TAX ON PAGE 2. 12. Enter tax from the Tax Table, or from line 9, page 2. Please check if you use Tax Table <input type="checkbox"/> \$ 5,540.42 13. (a) Dividends received credit (line 5 of Schedule J) \$ _____ (b) Retirement income credit (line 12 of Schedule K) \$ _____ 14. Balance (line 12 less line 13) \$ _____ 15. Enter your self-employment tax from separate Schedule C or F \$ _____ 16. Sum of lines 14 and 15 \$ _____ 17. (a) Tax withheld (line 5 above). Attach Forms W-2 (Copy B). \$ 5,540.42 (b) Payments and credits on 1955 Declaration of Estimated Tax, page 11 \$ 4,000.00 District Director's office where paid _____ 18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the balance here. Send this balance with your return to "Internal Revenue Service." If less than \$2.00, do not send. \$ 1,540.42 19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the overpayment here. If less than \$2.00, it will be refunded only upon application. See instructions, page 25. \$ 30.37 Enter amount of line 19 you want credited on 1956 estimated tax \$ _____ <b>Total 1,573.79</b>	
<b>Taxpayer sign here</b>	In your wife (or husband) making a separate return for 1955? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," write her (his) name. _____ Did you pay or agree to pay anyone for assistance in the preparation of your return? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," enter his name and address. _____ <b>John W. L. A. 809 Jackson Tower</b> <b>Portland 5, Oregon</b>	
<b>Preparer (other than taxpayer) sign here</b>	I declare under the penalties of perjury that this return (including any accompanying schedule and statement) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. (Date) <b>8/27/56</b> I declare under the penalties of perjury that I prepared this return for the individual named herein, and that this return (including any accompanying schedule and statement) is, to the best of my knowledge and belief, a true, correct, and complete return based on all the information supplied to me and to the best of my knowledge and belief. (Date) <b>8/25/56</b> <b>809 Jackson Tower, Portland 5, Oregon</b>	

• ATTACH COPY B OF FORMS W-2 HERE •

## Defendant's Exhibit No. 1084, page 5

CLIENTS CO. 14

C. A. and ELIZABETH PERKINSdba C. A. PERKINS CO.

## INCOME:-

Rentals	54,084.72	
Interest	<u>3,073.58</u>	57,158.30

## EXPENSES:-

Rent	120.00	
Interest	4,485.18	
Taxes	5,132.79	
Collection	39.75	
Insurance	3,420.48	
Office	480.00	
Heat and Light	1,023.34	
Telephone and Telegraph	105.22	
Legal	144.33	
Building Maintenance	5,496.51	
Miscellaneous	260.06	
Travel	(38.12)	
Boat Maintenance 75% of actual	420.20	
Depreciation (Schedule attached)	<u>15,322.31</u>	<u>36,412.05</u>

Net Profit

20,746.25

## Defendant's Exhibit No. 1085, page 1

CLIENT'S COPY

## U. S. INDIVIDUAL INCOME TAX RETURN

1085  
1956

Form 1040

U. S. Treasury Department  
Internal Revenue Service

For calendar year or other taxable year beginning 1956, and ending 1956

PLEASE TYPE OR PRINT

Name <b>G. A. and Elizabeth Perkins</b>		Your Social Security No. and Occupation <b>532-31-1597</b> <i>Active</i>	
Home Address <b>P. O. Box 59</b>		Wife's Social Security No. and Occupation <b>Retired</b>	
Vancouver		Clark Washington	

If income was all from salaries and wages, use Pages 1 and 2 Only. If such income was less than \$5,000, you may need to use Page 1 Only. See Page 3 of the instructions.

Exemptions	1. Check blocks which apply. Check for wife if she had no income or her income is included in this return.	Regular \$600 exemption	<input checked="" type="checkbox"/> Yourself	<input type="checkbox"/> Wife	Enter number of blocks checked
	Additional exemption if 65 or over at end of taxable year	<input type="checkbox"/> Yourself	<input type="checkbox"/> Wife		
	Additional exemption if blind or end of taxable year	<input type="checkbox"/> Yourself	<input type="checkbox"/> Wife		
	2. List names of your children who qualify as dependents, give address if different from yours.				
3. Enter number of exemptions claimed for other persons listed at top of page 2.					
4. Enter the total number of exemptions claimed on lines 1, 2, and 3.				2	

Income	5. Enter all wages, salaries, bonuses, commissions, and other compensation received in 1956, before payroll deductions. Outside salesmen and persons claiming traveling, transportation, or reimbursed expenses, see instructions, page 6.	Employer's Name	Where Employed (City and State)	Wages, etc.	Income Tax Withheld
	Enter totals here				
	6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 6. Attach required explanation.)				
	7. Balance (line 5 less line 6)				
	8. Profit (or loss) from business from separate Schedule C				
9. Profit (or loss) from farming from separate Schedule F					
10. Other income (or loss) from page 3					
11. ADJUSTED GROSS INCOME (sum of lines 7, 8, 9, and 10)					\$ 3,179.29

Special computation	Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 7, and check here <input type="checkbox"/>	Widows and widowers who are entitled to the special tax computation, see instructions, page 7, and check here <input type="checkbox"/>
	If income on line 11 is under \$5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions. If income is \$5,000 or more, or if you itemize deductions, compute your tax on page 2.	

Tax due or refund	12. Enter tax from the Tax Table, or from line 9, page 2. Please check if you use Tax Table <input type="checkbox"/>	\$ 18.66
	13. (a) Dividends received credit from line 5 of Schedule J.	\$
	(b) Refinement income credit from line 12 of Schedule K.	\$
	14. Balance (line 12 less line 13)	\$ 18.66
	15. Enter your self-employment tax from separate Schedule C or F.	\$
	16. Sum of lines 14 and 15	\$ 18.66
17. (a) Tax withheld (line 5 above). Attach Forms W-2 (Copy B).	\$	
(b) Payments and credits on 1956 Declaration of Estimated Tax (see page 1).	\$ 1,500.00	
District Director's office where paid	\$	
18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the balance here. Pay in full with this return if less than \$1.00, do not round.	\$	
19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the overpayment here. If less than \$1.00, it will be refunded only upon application. See instructions, page 8.	\$ 1,481.34	
Enter amount of line 19 to be credited on 1957 estimated tax <input type="checkbox"/> Refunded \$		

Taxpayer sign here	Did you pay or agree to pay anyone for assistance in the preparation of your return? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," enter his name.	Is your wife (husband) making a separate return for 1956? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," enter her (his) name.	Do you owe any Federal tax for your year before 1956? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief it is true, correct, and complete.		
Preparer (other than taxpayer) sign here	To or split-income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN.		
	I declare under the penalties of perjury that I prepared this return for the person(s) named herein and that this return (including any accompanying schedules and statements) is, to the best of my knowledge and belief, a true, correct, and complete return based on all the information relating to the matter required to be reported in this return of which I have any knowledge.		
	805 Jackson Tower, Portland 5, Ore.		7/10/57

ATTACH COPY 8 OF FORMS W-2 HERE

Exh 1085, p. 1



## Defendant's Exhibit No. 1085, page 7

CLIENT'S COPY

C. A. and Elizabeth Perkins

dba C. A. Perkins Co.

1950

## Incomes:-

Rentals  
Interest33,314.04  
1,949.12

35,263.46

## Expenses:-

Rent  
Interest  
Taxes  
Collections  
Office  
Insurance  
Heat & Light  
Telephones & Telegraph  
Legal  
Building Maintenance  
Miscellaneous  
Travel  
Boat Maintenance 75% of Actual  
Depreciation (Schedule Attached)142.50  
5,820.52  
7,054.04  
10.50  
480.00  
985.93  
920.51  
76.91  
629.41  
11,310.42  
251.40  
856.82  
1,325.94  
12,577.09

42,441.99

Operating Loss

(7,178.53)

Exh 1085, p. 7



## Defendant's Exhibit No. 1086, page 8

C. A. and Elizabeth Perkins

dba C. A. Perkins Company 1957

CLIENTS COPY

## Income:

Rentals	\$47,726.08	
Interest	<u>3,343.50</u>	51,069.58

## Expenses:

Rent	120.00	
Interest	1,978.20	
Taxes	5,676.76	
Collections	6.00	
Office	480.00	
Insurance	3,412.13	
Heat, Light, Water	2,210.27	
Legal	373.37	
Building Maintenance	9,824.67	
Miscellaneous	203.69	
Heat Maintenance, 75% of actual	1,464.14	
Depreciation (Schedule Attached)	<u>11,548.86</u>	37,298.09

Operating Gain

13,771.49

## Defendant's Exhibit No. 1087, page 1

**Form 1040** U. S. INDIVIDUAL INCOME TAX RETURN—1958  
 U. S. Treasury Department Internal Revenue Service

Name **G. A. and Elizabeth Perkins**  
 (If this is a joint return of husband and wife, use first names and middle initials of both)  
 Home address **213 East Reserve**  
 (Number and street or rural route)  
**Vancouver** **Washington**  
 (City, town or post office) (State) (Zip)

Year Spent Security Number **532 34 1967** Occupation \_\_\_\_\_  
 (If you are self-employed)  
 Wife's Spent Security Number \_\_\_\_\_ Occupation \_\_\_\_\_

**If Income Was All From Salaries and Wages, Use Pages 1 and 2 Only. See Page 3 of the Instructions.**

**Exemptions**

1. Check blocks which apply. (a) Regular \$600 exemption ☒ Yourself ☐ Wife Enter number of exemptions checked **2**  
 Check for wife if she had no income or her income is included in this return. (b) Additional \$600 exemption if 65 or over at end of taxable year ☐ Yourself ☐ Wife  
 (c) Additional \$600 exemption if blind at end of taxable year ☐ Yourself ☐ Wife Enter number of children listed **3**

2. List first names of your children who qualify as dependents, give address if different from yours. \_\_\_\_\_

3. Enter number of exemptions claimed for other persons listed at top of page 2. \_\_\_\_\_

4. Enter the total number of exemptions claimed on lines 1, 2, and 3. **3**

**Income**

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any amount of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions, pp. 5-4)  
 Employer's Name \_\_\_\_\_ Where Employed (City and State) \_\_\_\_\_ (a) Wages, etc. \$ \_\_\_\_\_ (b) Income Tax Withheld \$ \_\_\_\_\_  
 Enter before here \$ \_\_\_\_\_ \$ \_\_\_\_\_

6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement.) \$ \_\_\_\_\_  
 7. Balance (line 5 less line 6) \$ \_\_\_\_\_  
 8. Profit (or loss) from business from separate Schedule C. \$ \_\_\_\_\_  
 9. Profit (or loss) from farming from separate Schedule F. \$ \_\_\_\_\_  
 10. Other income (or loss) from page 3 (dividends, interest, rents, pensions, etc.) **35,269 06**  
 11. **ADJUSTED GROSS INCOME** (sum of lines 7, 8, 9, and 10) **\$ 35,269 06**

If either you or your wife had more than one employer and the social security tax (FICA) withheld from wages exceeded \$94.50, see instructions, page 5.

Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 7, and check here ☐ Widows and widowers with dependent child who are entitled to the special tax computation, see instructions, page 8; and check here ☐

**Tax due or refund**

12. Tax on income on line 11. (If line 11 is under \$5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is \$5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2) \$ **10,455 16**

If income was all from wages, credit lines 13 through 16

13. (a) Dividends received credit from line 5 of Schedule J. \$ \_\_\_\_\_  
 (b) Retirement income credit from line 12 of Schedule K. \$ \_\_\_\_\_  
 14. Balance (line 12 less line 13) \$ **10,455 16**  
 15. Enter your self-employment tax from separate Schedule C or F. \$ **10,455 16**  
 16. Sum of lines 14 and 15. \$ **10,455 16**

17. (a) Tax withheld (line 5 above). Attach Forms W-2, Copy B. \$ **4,200 00**  
 (b) Payments and credits on 1958 Declaration of Estimated Tax (see page 6) **4,200 00**  
 District Director's office where paid \_\_\_\_\_

18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the **BALANCE DUE** here **\$ 6,255 16**  
 Pay in full with this return to "Internal Revenue Service." If less than \$1.00, disregard without payment.

19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the **OVERPAYMENT** here **\$ 127 39**  
 If less than \$1.00, the overpayment will be refunded only upon application.

20. Amount of line 19 to be: (a) Credited on 1959 estimated tax \$ \_\_\_\_\_ (b) Refunded \$ **Total 6,382 35**

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☐ No (See page 6.)  
 If "Yes," did you submit an itemized statement of expenses to your employer? ☐ Yes ☐ No

County in which you live: **Clark** Is your wife (husband) filing a separate return for 1958? ☐ Yes ☒ No If "Yes," enter her (his) name: \_\_\_\_\_

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been prepared by me and to the best of my knowledge and belief it is true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

Prepared by **Clark** Date **8/21/59** X  
 (Taxpayer's signature and date) (If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date)  
**209 Jackson Tower, Portland 5, Ore.** **8/20/59**  
 (Signature of preparer other than taxpayer) (Address) (Name)  
 80-10-10407-1

Exh 1087, p 1

## Defendant's Exhibit No. 1087, page 6

C. A. and Elizabeth Perkins

dba C. A. Perkins Co.

1958

CLIENT'S COPY

## Income:

Rentals  
Interest

854,693.71

3,340.34

58,034.05

## Expenses:

Rent  
Interest  
Taxes  
Office  
Collection  
Insurance  
Heat, Light  
Legal  
Building Maintenance  
Miscellaneous  
Boat Maintenance, 75% of Actual  
Travel  
Bad Debts  
Depreciation (Schedule Att.)

120.00

2,235.46

6,623.34

670.97

14.10

195.13

6.79

754.20

3,238.43

360.07

3,838.78

3,491.21

3,433.9711,700.0535,682.50

Operating Gain

21,351.55

Exh. 1087, p. 6

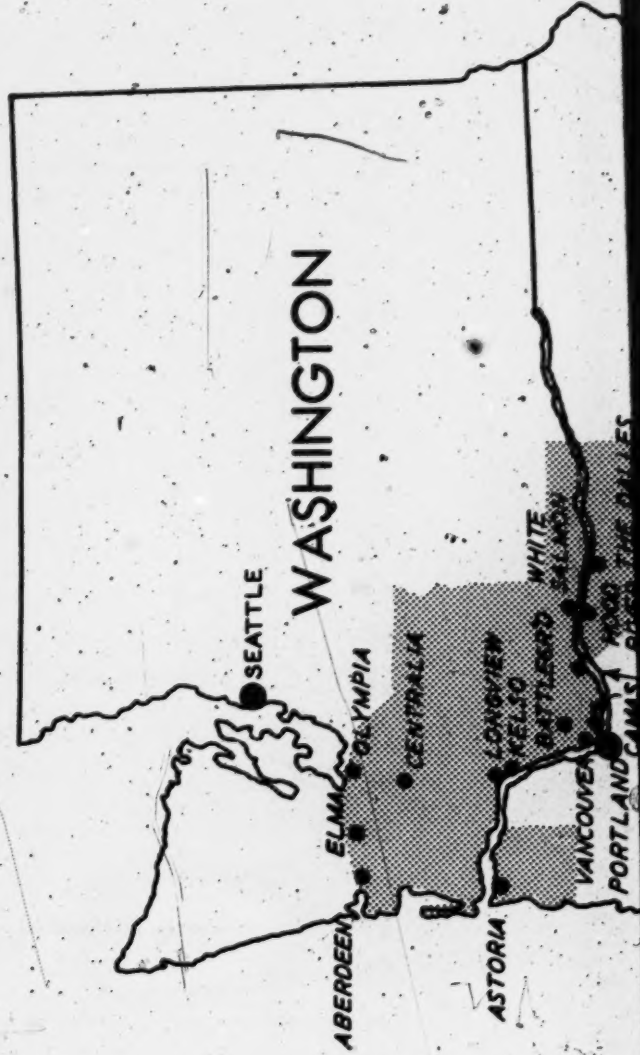


586

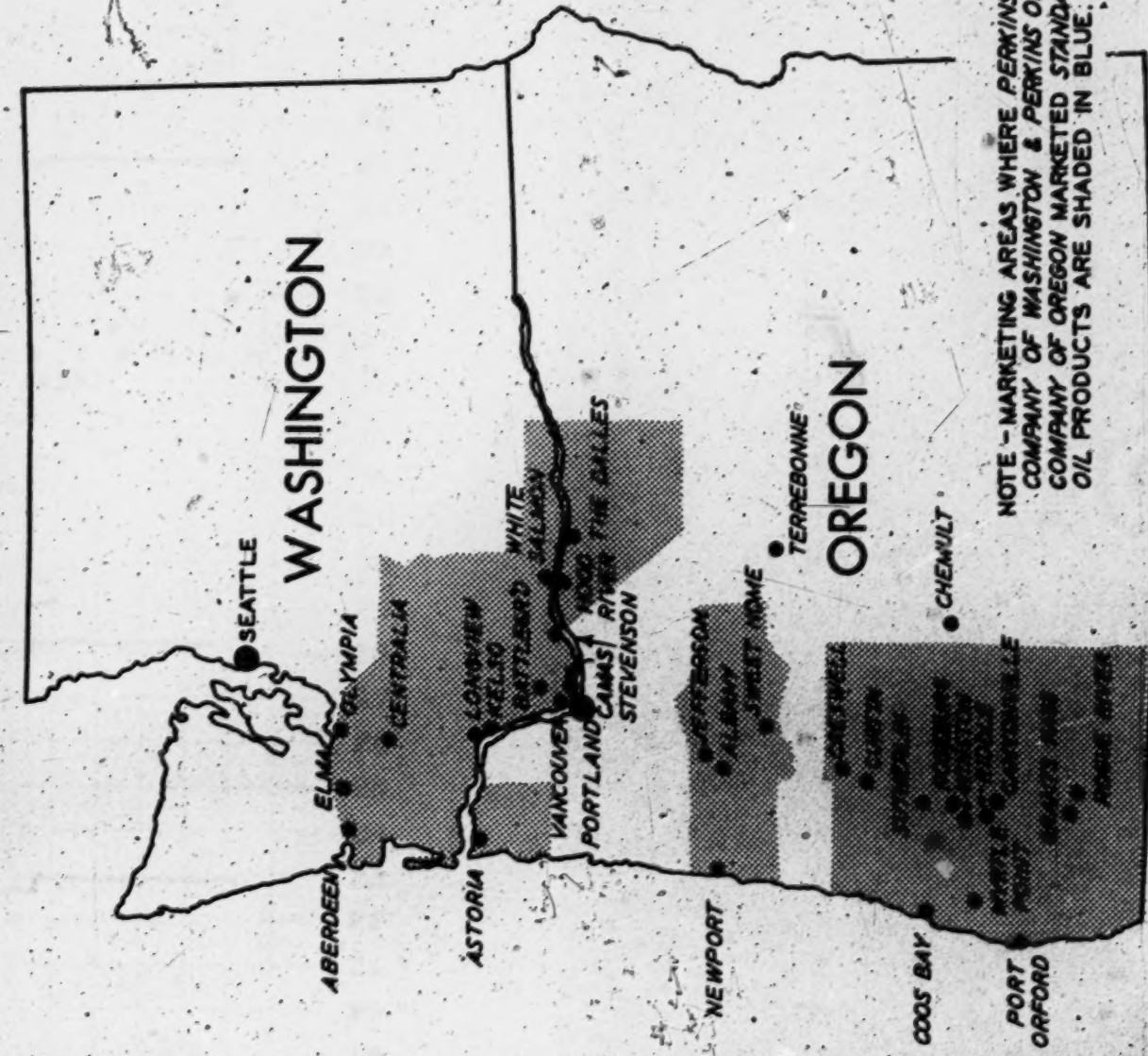
## MARKETING AREA

Perkins Oil Company of Washington

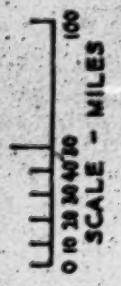
Perkins Oil Company of Oregon



**MARKETING AREA**  
**Perkins Oil Company of Washington**  
**Perkins Oil Company of Oregon**



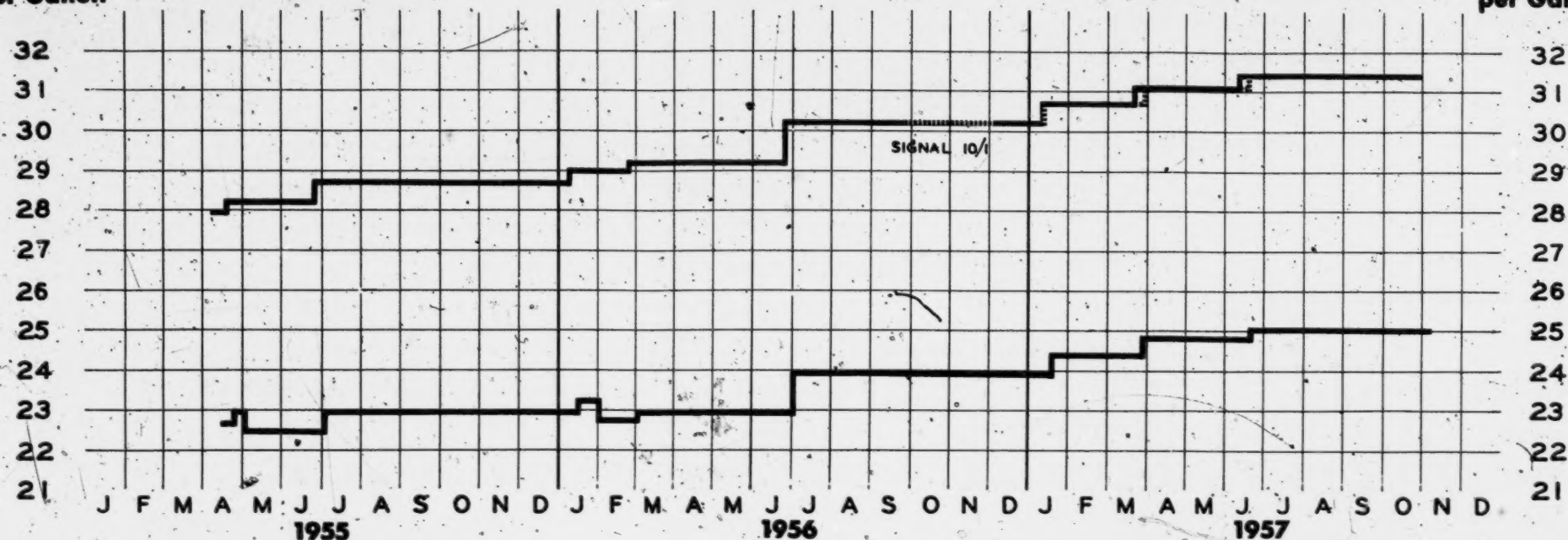
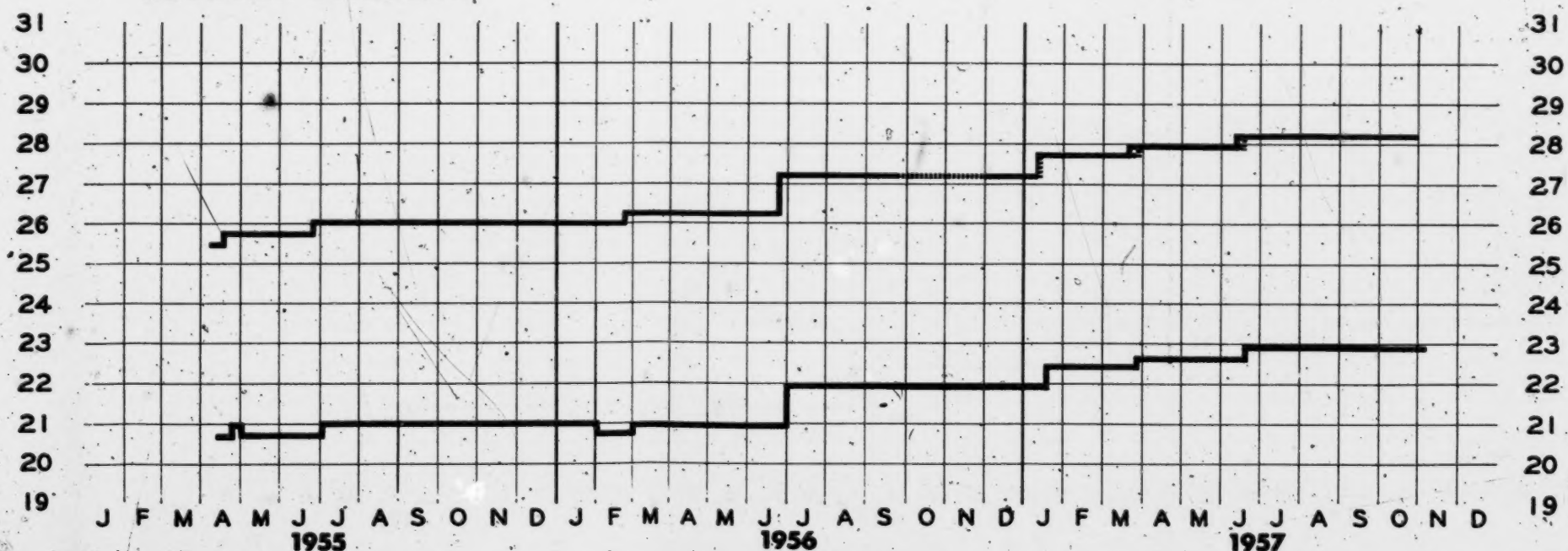
NOTE - MARKETING AREAS WHERE PERKINS OIL COMPANY OF WASHINGTON & PERKINS OIL COMPANY OF OREGON MARKETING STANDARD OIL PRODUCTS ARE SHADED IN BLUE.



Based on Exhibit 1449



Based on Exhibits 1457a, etc.

**GASOLINE PRICES****JEFFERSON, OREGON**Cents  
per Gallon**ETHYL GASOLINE**Cents  
per Gallon**REGULAR GASOLINE**

— STANDARD'S prices to Chevron Dealers  
 - - - - - STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -  
 Destination: JEFFERSON  
 Supply Point: WILLBRIDGE

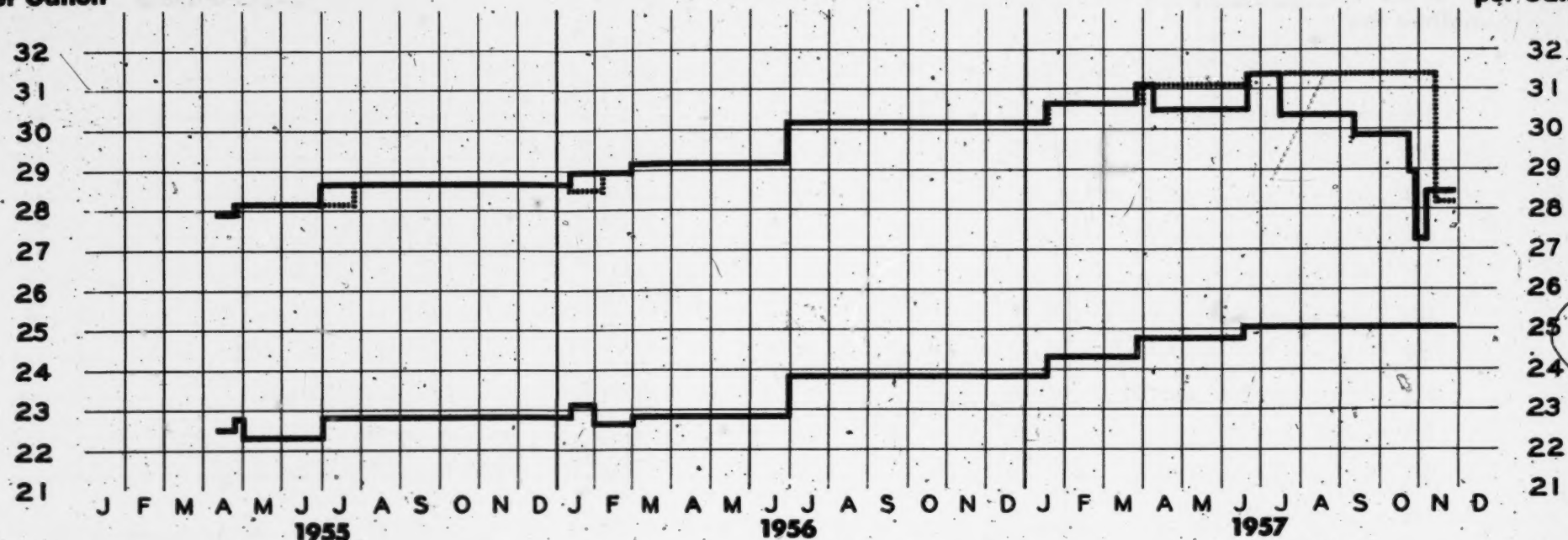
Based on Exhibits 1457a, 1463, and 1478  
 Data showing price to Perkins without Freight Allowance  
 and price to Perkins' Customers omitted.

## GASOLINE PRICES

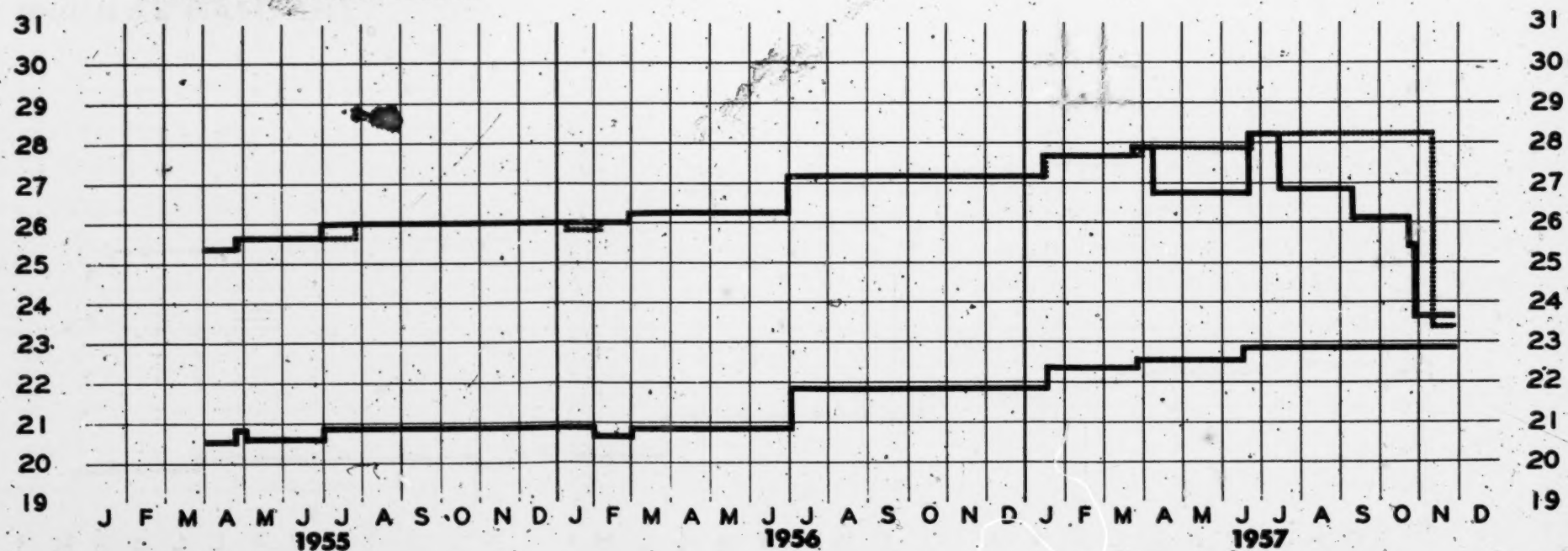
ALBANY, OREGON

Cents  
per Gallon

## ETHYL GASOLINE

Cents  
per Gallon

## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers

— STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS

Destination:

— Supply Point:

ALBANY

WILLBRIDGE

Based on Exhibits 1457a, 1463, and 1479

Data showing price to Perkins without Freight Allowance and price to Perkins' Customers omitted.



# GASOLINE PRICES

SWEET HOME, OREGON

## ETHYL GASOLINE

Cents  
per Gallon

Cents  
per Gallon

32  
31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21

32  
31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21

J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D  
1955 1956 1957

NO ETHYL

## REGULAR GASOLINE

31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21  
20  
19

31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21  
20  
19

J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D  
1955 1956 1957

— STANDARD'S prices to Chevron Dealers  
— STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -  
Destination: SWEET HOME  
Supply Point: WILLBRIDGE

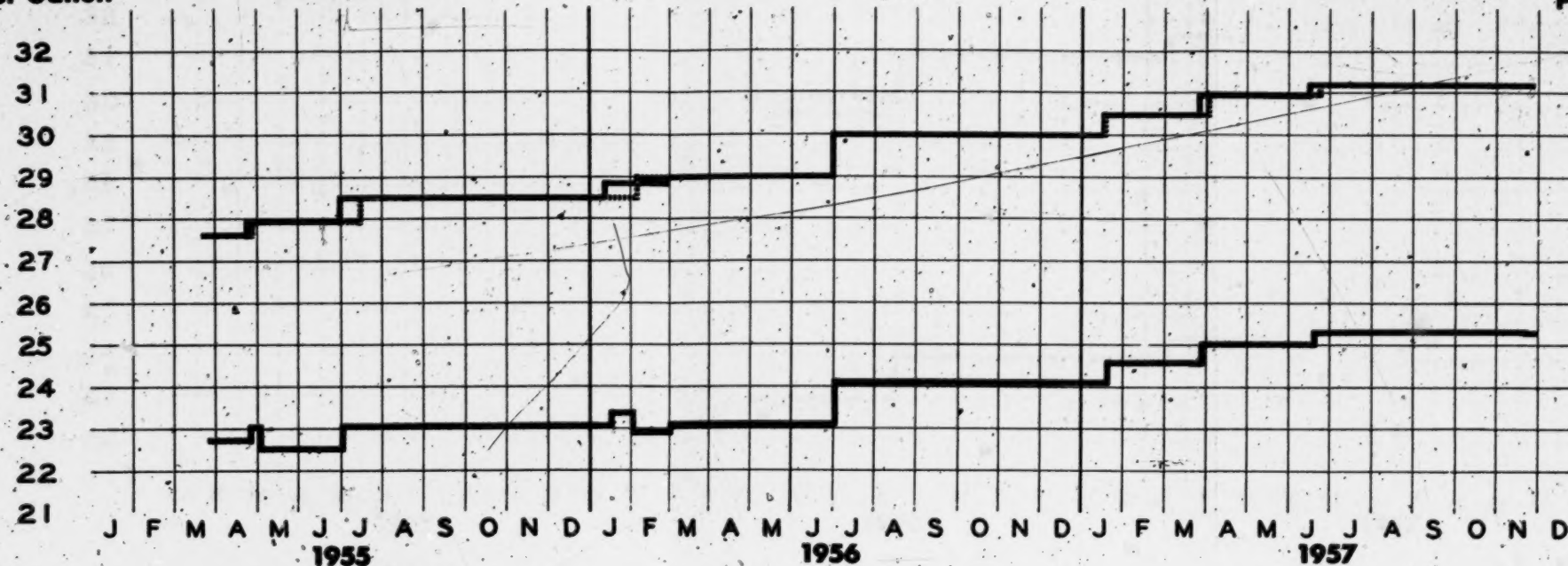
Based on Exhibits 1457a, 1463, and 1481  
Data showing price to Perkins without Freight Allowance  
and price to Perkins' Customers omitted.

# GASOLINE PRICES

VANCOUVER, WASHINGTON

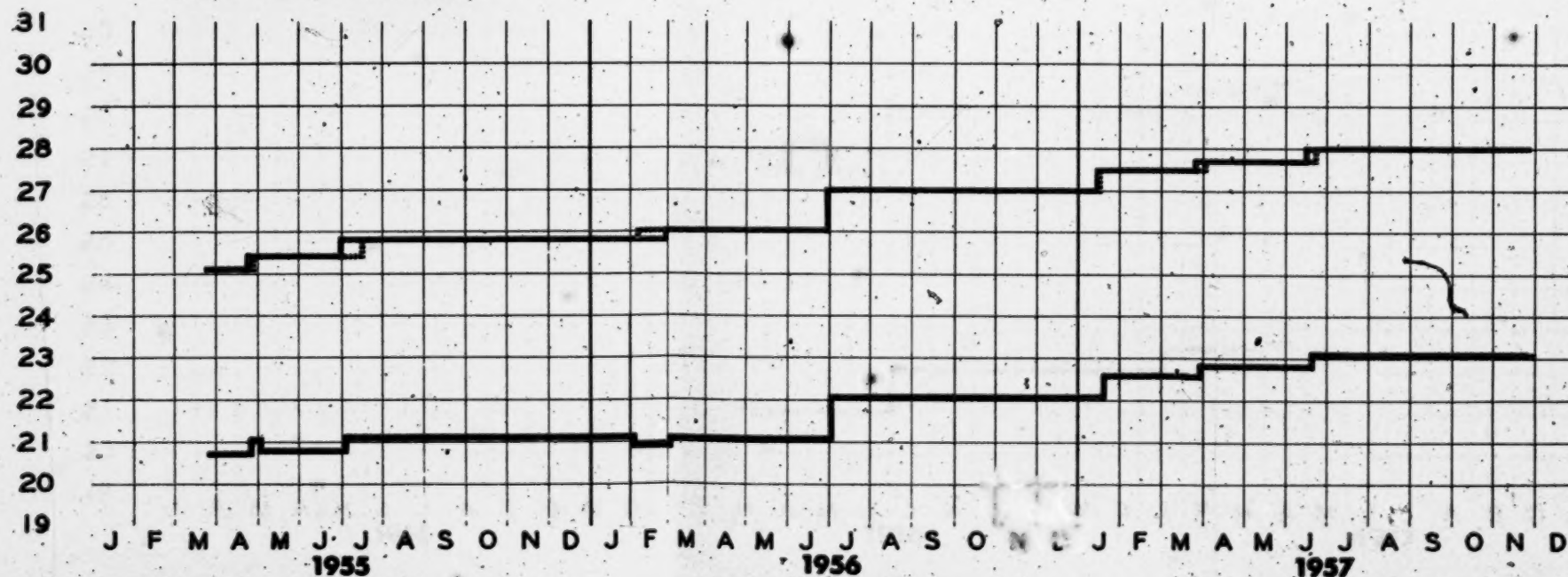
## ETHYL GASOLINE

Cents  
per Gallon



Cents  
per Gallon

## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers  
— STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -  
Destination: VANCOUVER  
Supply Point: WILLBRIDGE

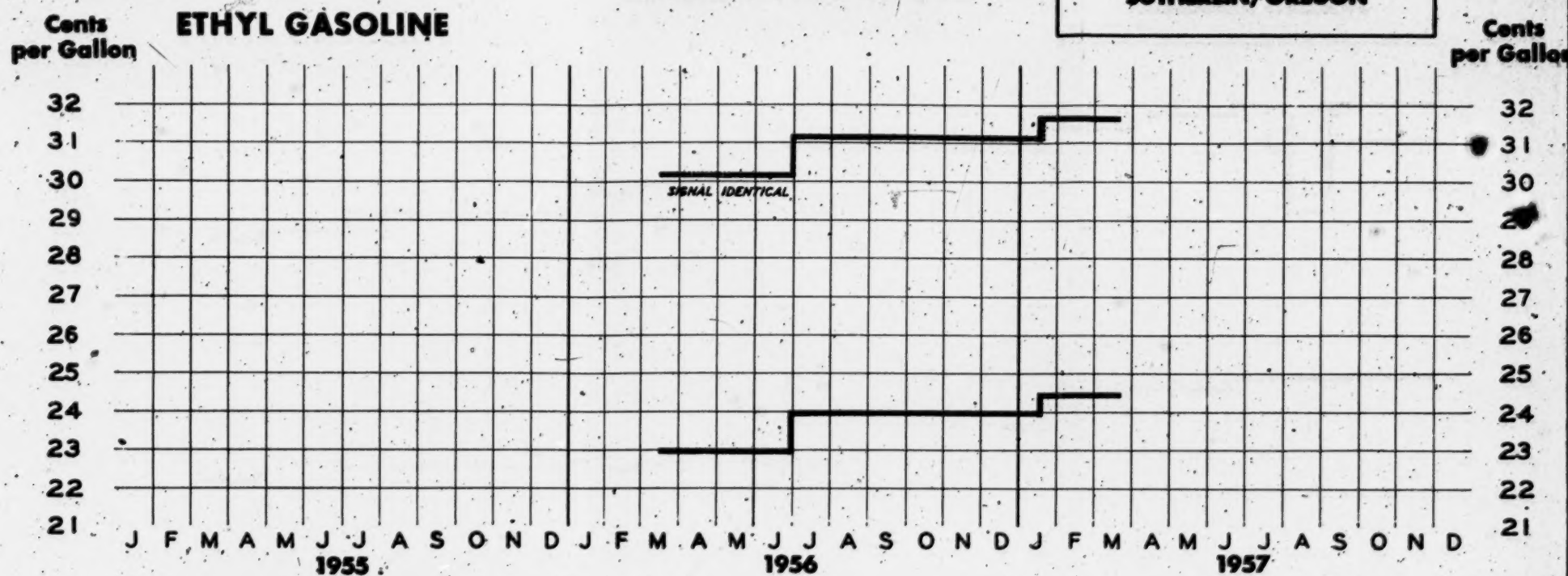
Based on Exhibits 1457a, 1463, and 1467a  
Data showing price to Perkins without Freight Allowance  
and price to Perkins' Customers omitted.



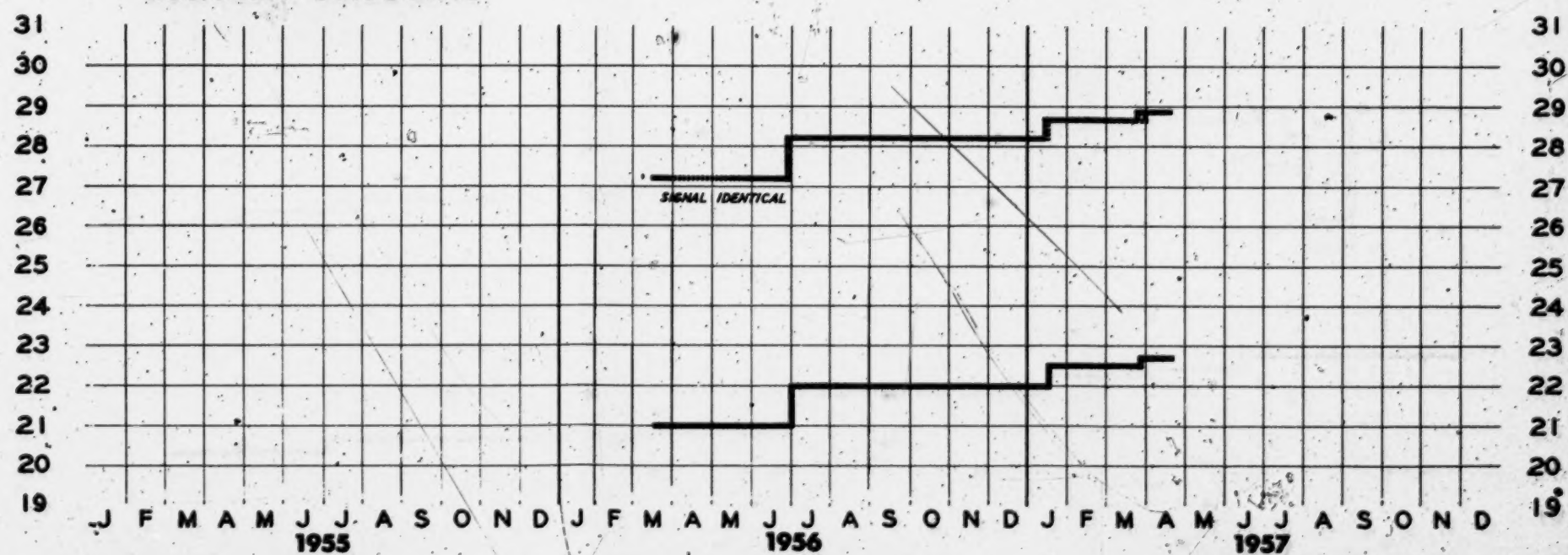
# GASOLINE PRICES

**SUTHERLIN, OREGON**

## ETHYL GASOLINE



## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers  
 - - - STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -  
 Destination: SUTHERLIN  
 Supply Point: WILLBRIDGE

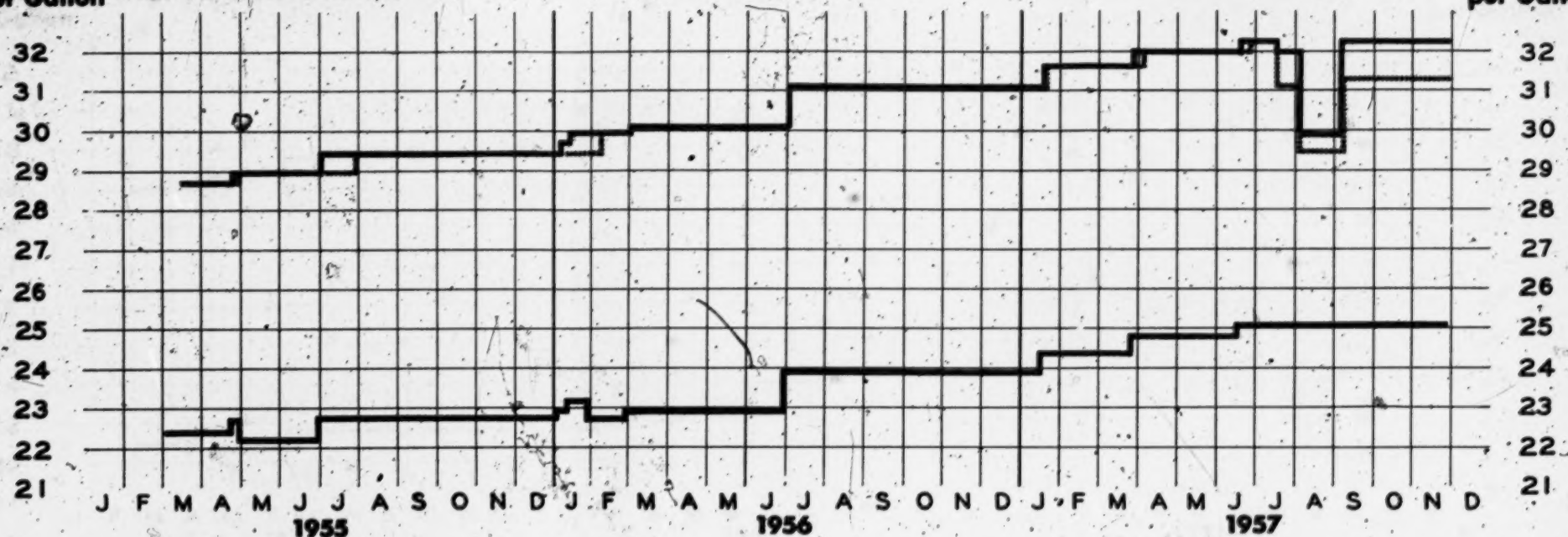
Based on Exhibits 1457a, 1463, and 1463  
 Data showing price to Perkins without Freight Allowance  
 and price to Perkins' Customers omitted.

## GASOLINE PRICES

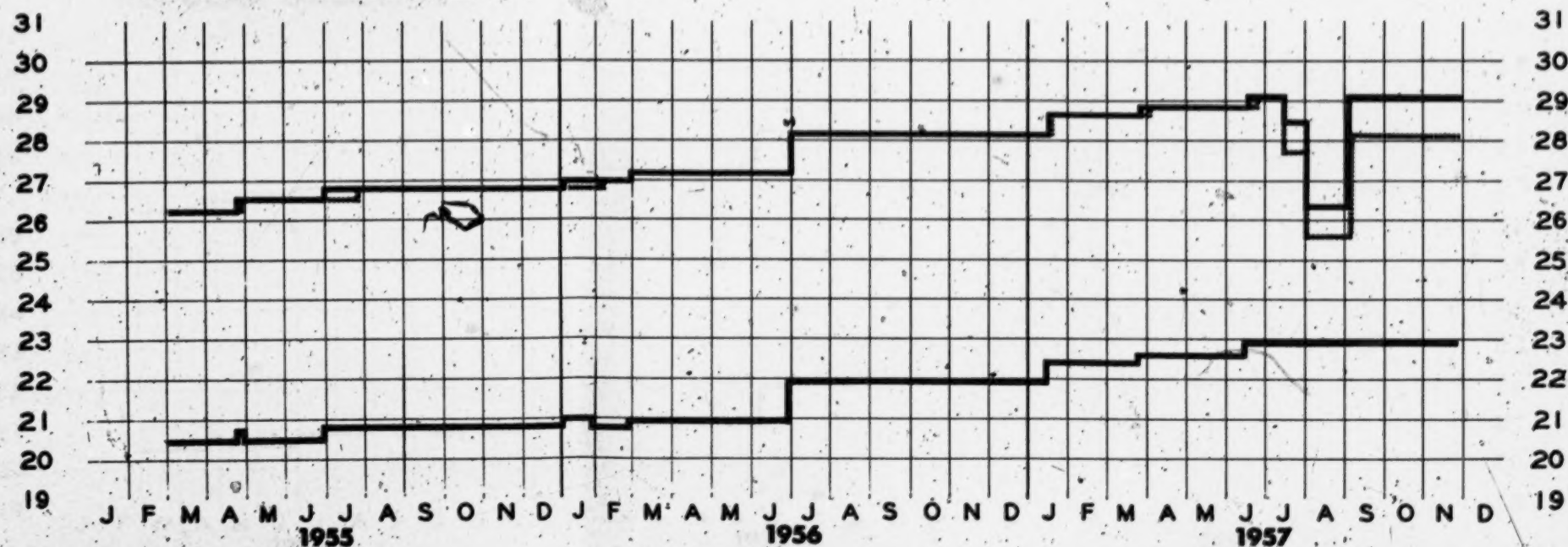
ROSEBURG, OREGON

Cents  
per Gallon

## ETHYL GASOLINE

Cents  
per Gallon

## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers  
 — STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -  
 Destination: ROSEBURG  
 Supply Point: WILLBRIDGE

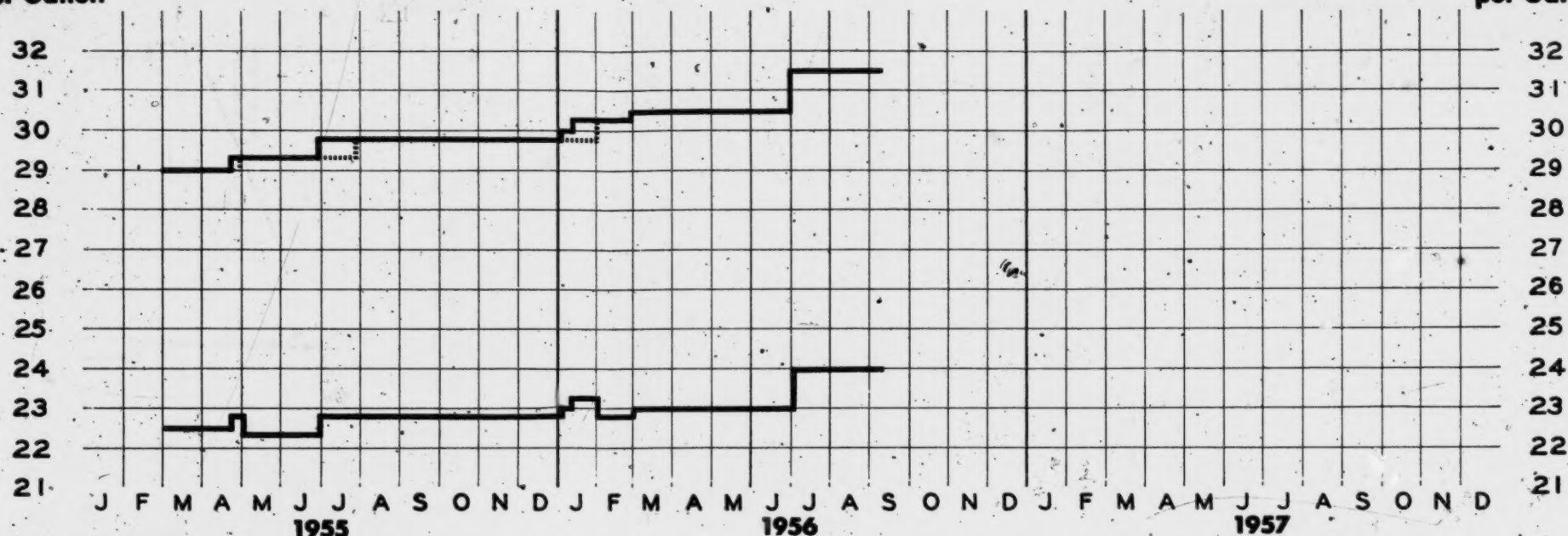
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 Data showing price to Perkins without Freight Allowance  
 and price to Perkins' Customers omitted.



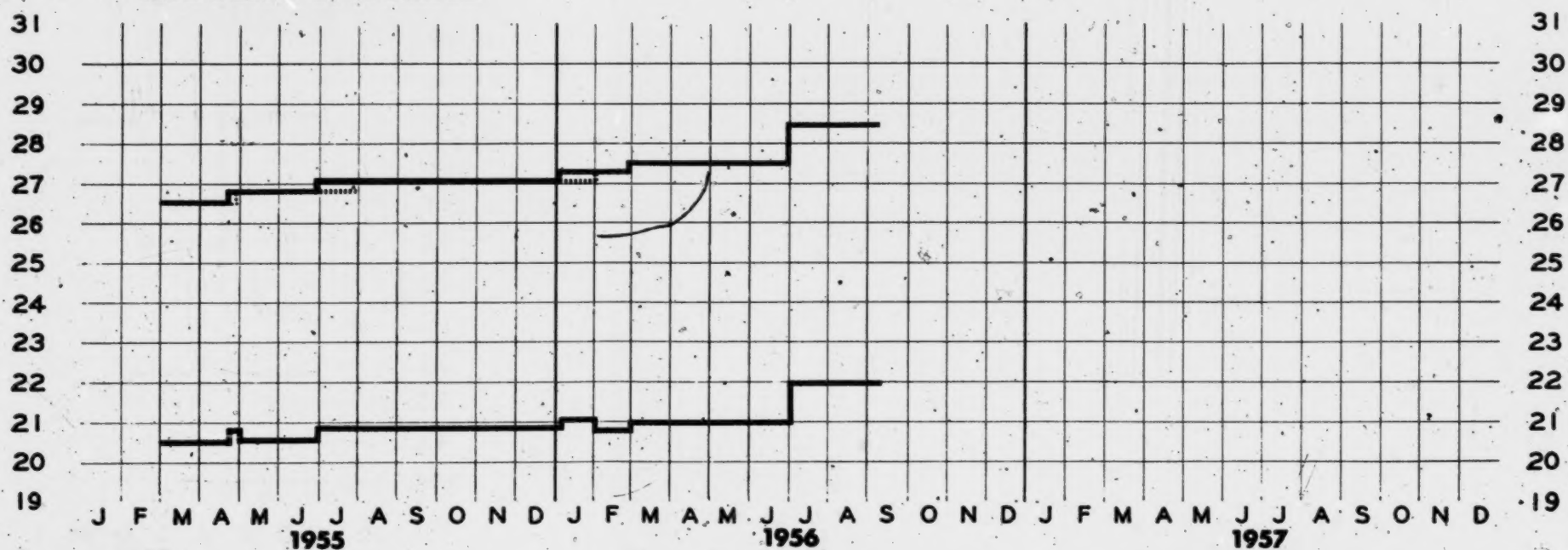
## GASOLINE PRICES

RIDDLE, OREGON

ETHYL GASOLINE

Cents  
per GallonCents  
per Gallon

## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers  
 ..... STANDARD'S prices to Signal Dealers

— STANDARD'S prices to PERKINS -  
 Supply Point: WILLBRIDGE

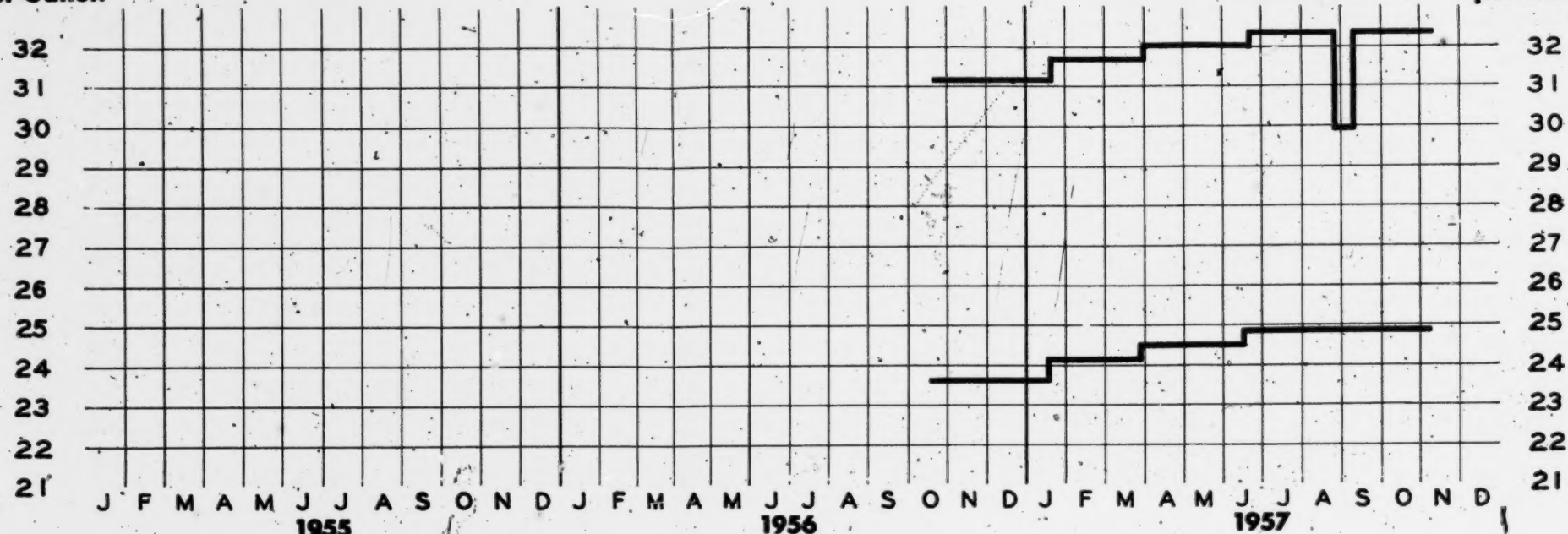
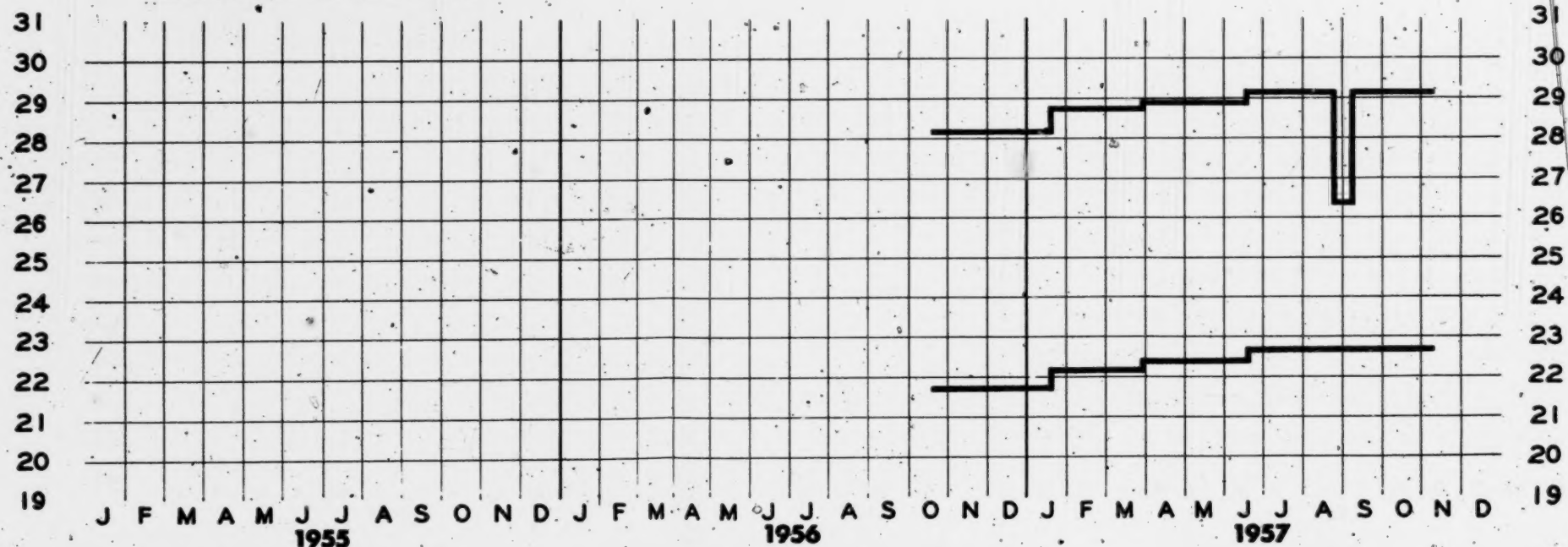
Based on 1457a, 1463, and 1488  
 Data showing price to Perkins without Freight Allowance  
 and price to Perkins' Customers omitted.



# GASOLINE PRICES

**WINSTON, OREGON**
**ETHYL GASOLINE**

 Cents  
per Gallon

 Cents  
per Gallon

**REGULAR GASOLINE**


—STANDARD'S prices to Chevron Dealers—

STANDARD'S prices to PERKINS -

Destination:

WINSTON

—Supply Point:

WILLBRIDGE

Based on Exhibits 1457a and 1489

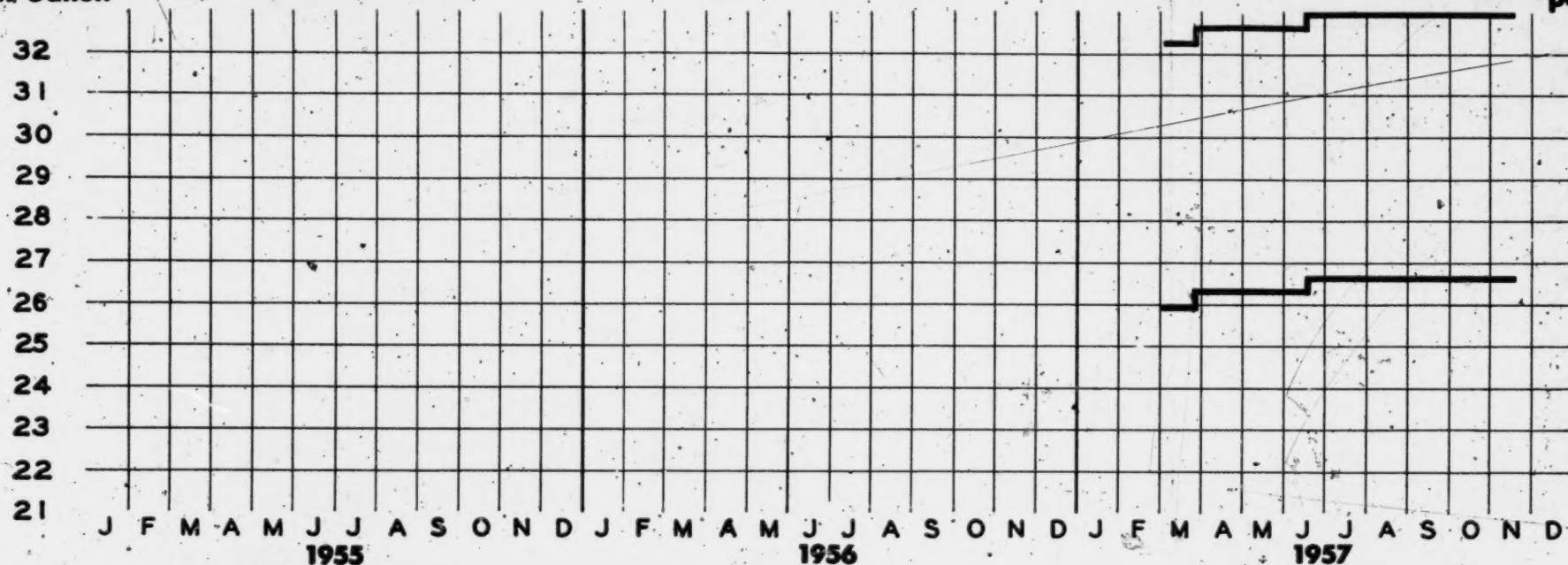
 Data showing price to Perkins without Freight Allowance  
and price to Perkins' Customers omitted.

# GASOLINE PRICES

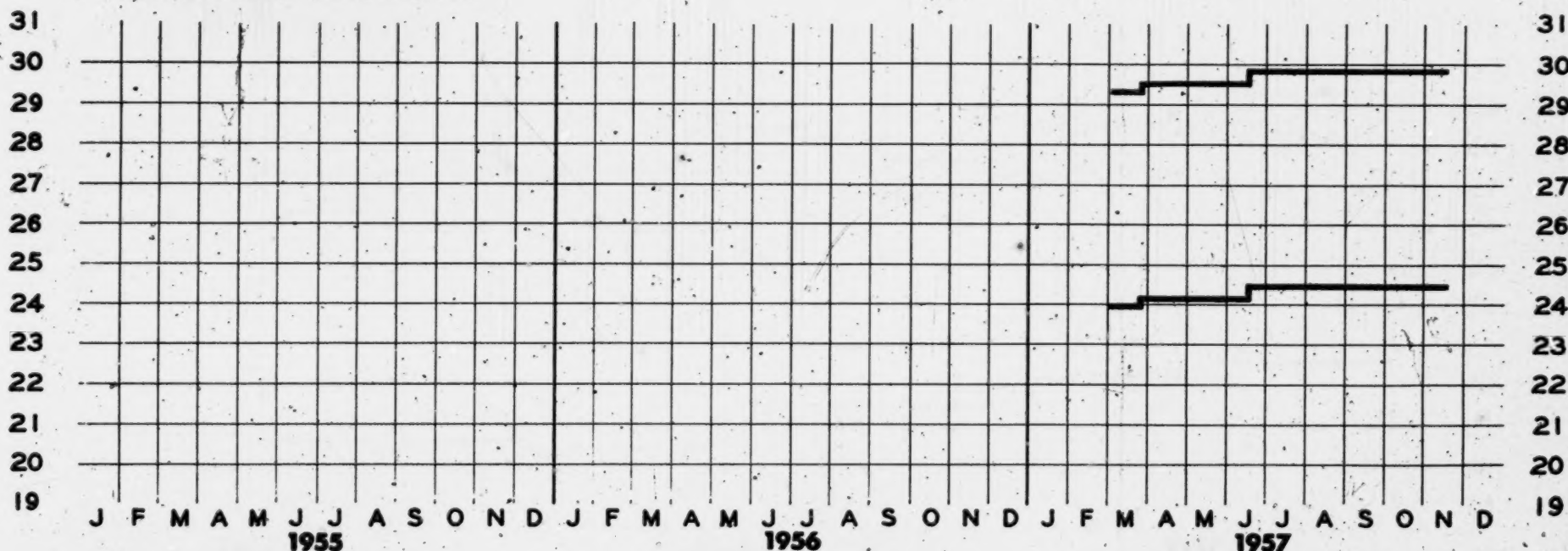
**PORT ORFORD, OREGON**

 Cents  
per Gallon

## ETHYL GASOLINE

 Cents  
per Gallon


## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers

STANDARD'S prices to PERKINS -

Destination: PORT ORFORD

Supply Point: COOS BAY

Based on Exhibits 1457a and 1490

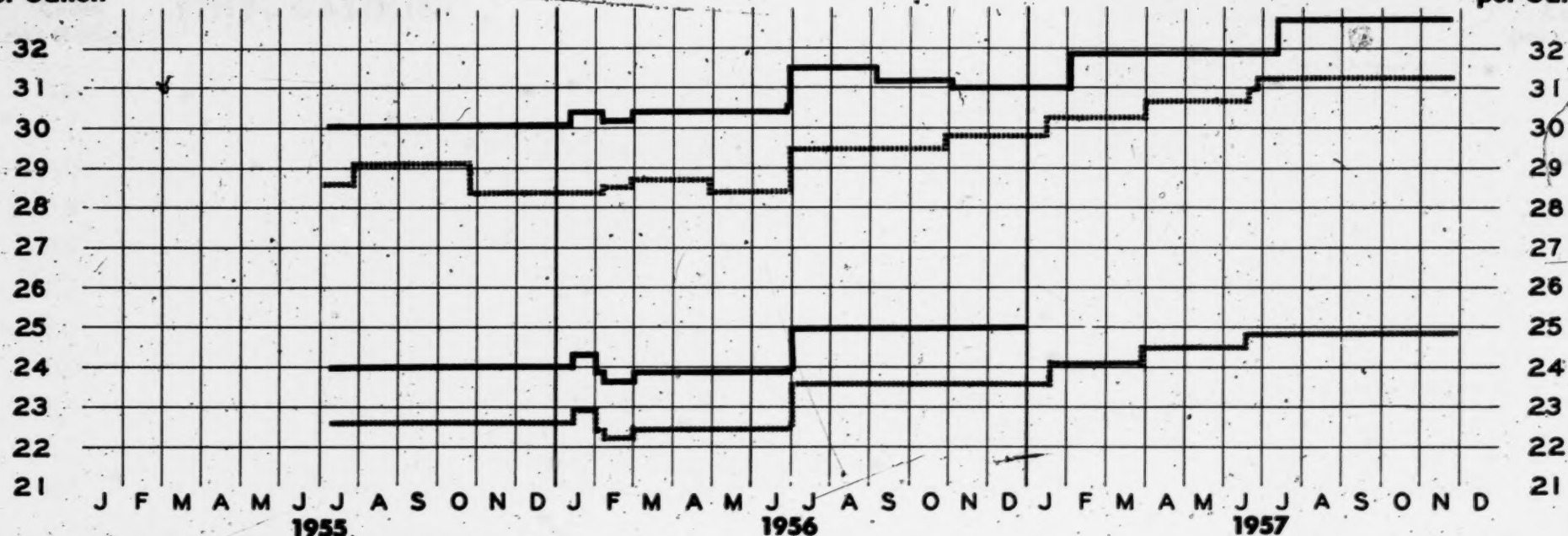
 Data showing price to Perkins without Freight Allowance  
and price to Perkins' customers omitted.



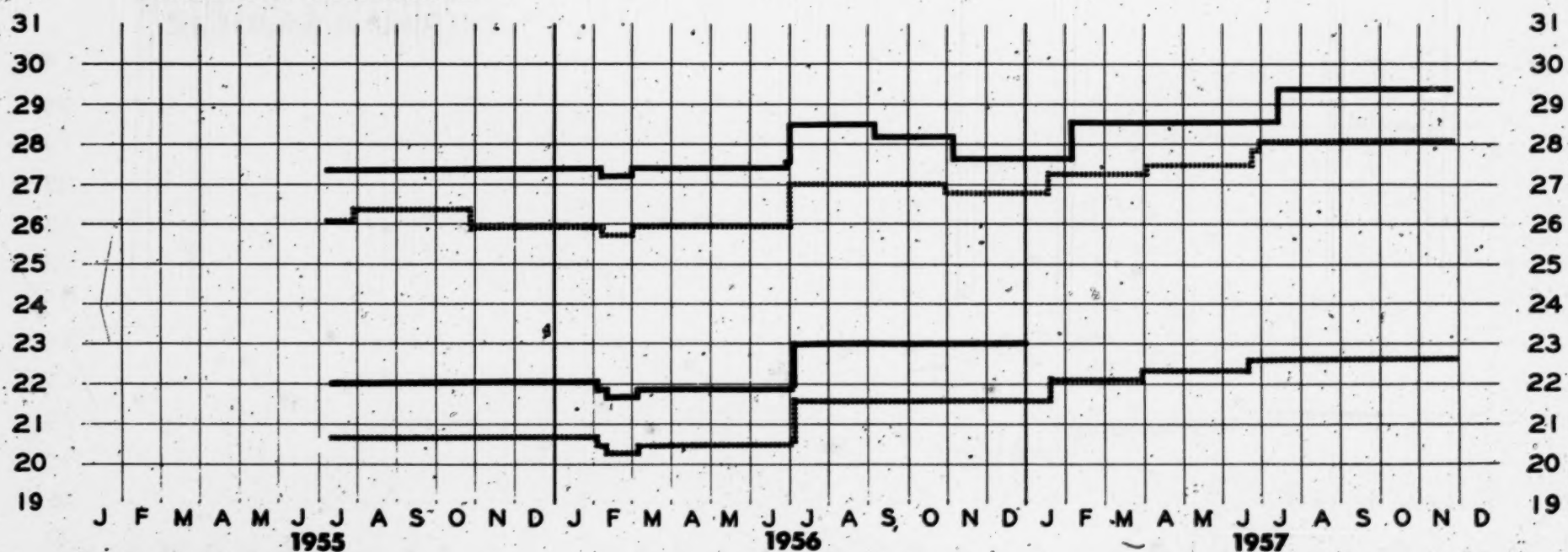
## GASOLINE PRICES

GRANTS PASS, OREGON

ETHYL GASOLINE

Cents  
per GallonCents  
per Gallon

## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers

— STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -

Destination:

— Supply Point:

— Supply Point:

GRANTS PASS

CRESCENT CITY

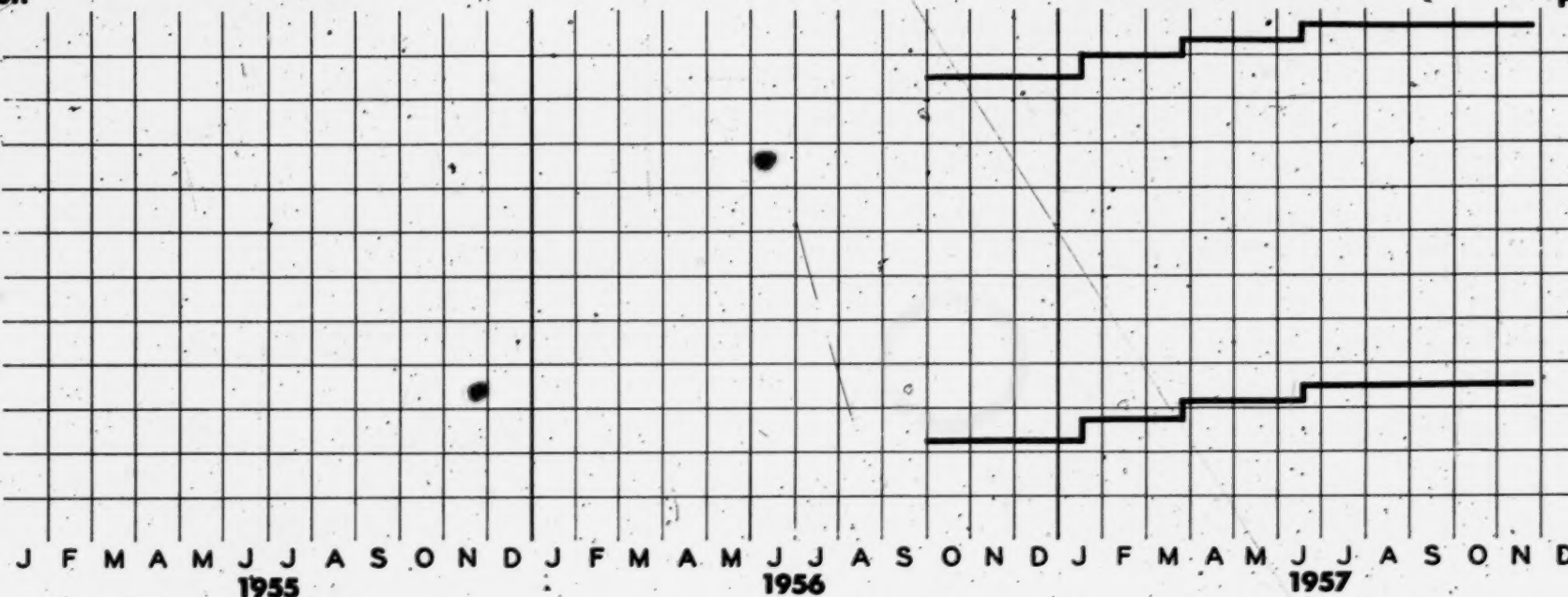
WILL BRIDGE

Based on Exhibits 1457a, 1463, and 1491

Data showing price to Perkins without Freight Allowance and price to Perkins' Customers omitted.

# GASOLINE PRICES

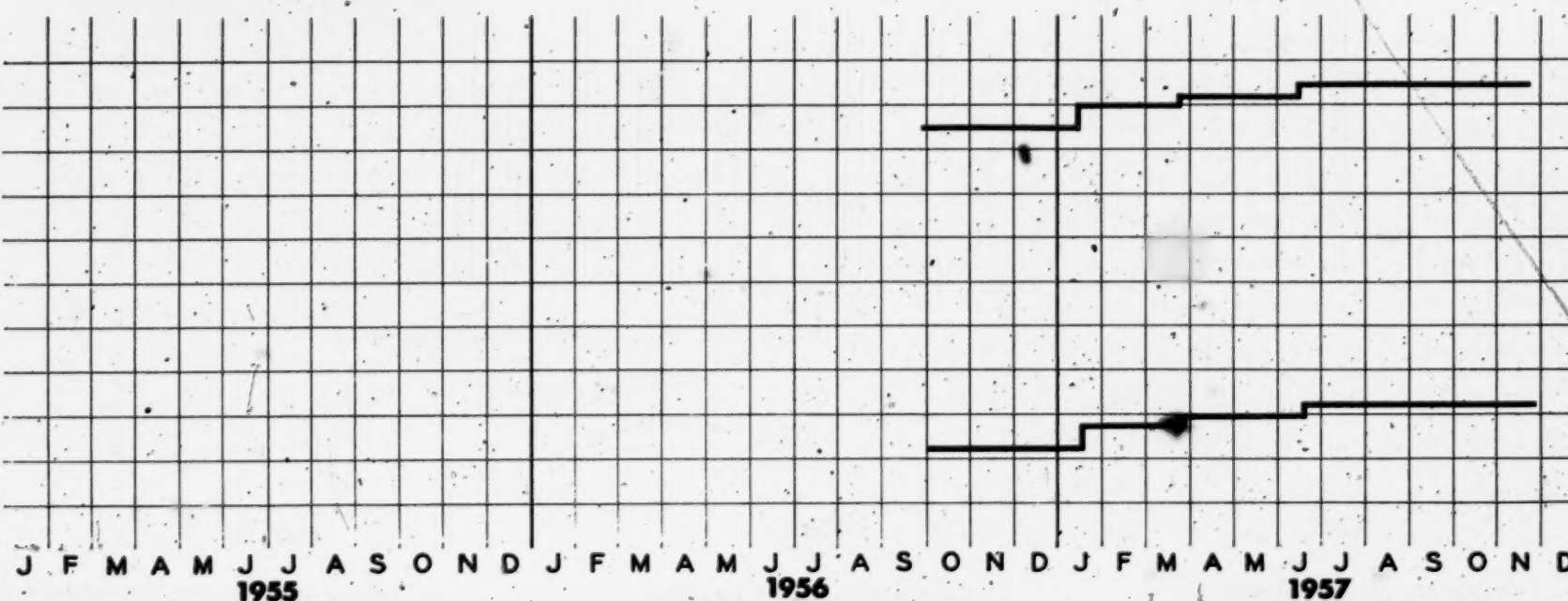
**ROGUE RIVER, OREGON**
**ETHYL GASOLINE**  
Cents per Gallon

32  
31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21


Cents per Gallon

32  
31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21

**REGULAR GASOLINE**

31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21  
20  
19

31  
30  
29  
28  
27  
26  
25  
24  
23  
22  
21  
20  
19

— STANDARD'S prices to Chevron Dealers

— STANDARD'S prices to PERKINS -

— Supply Point: WILLBRIDGE

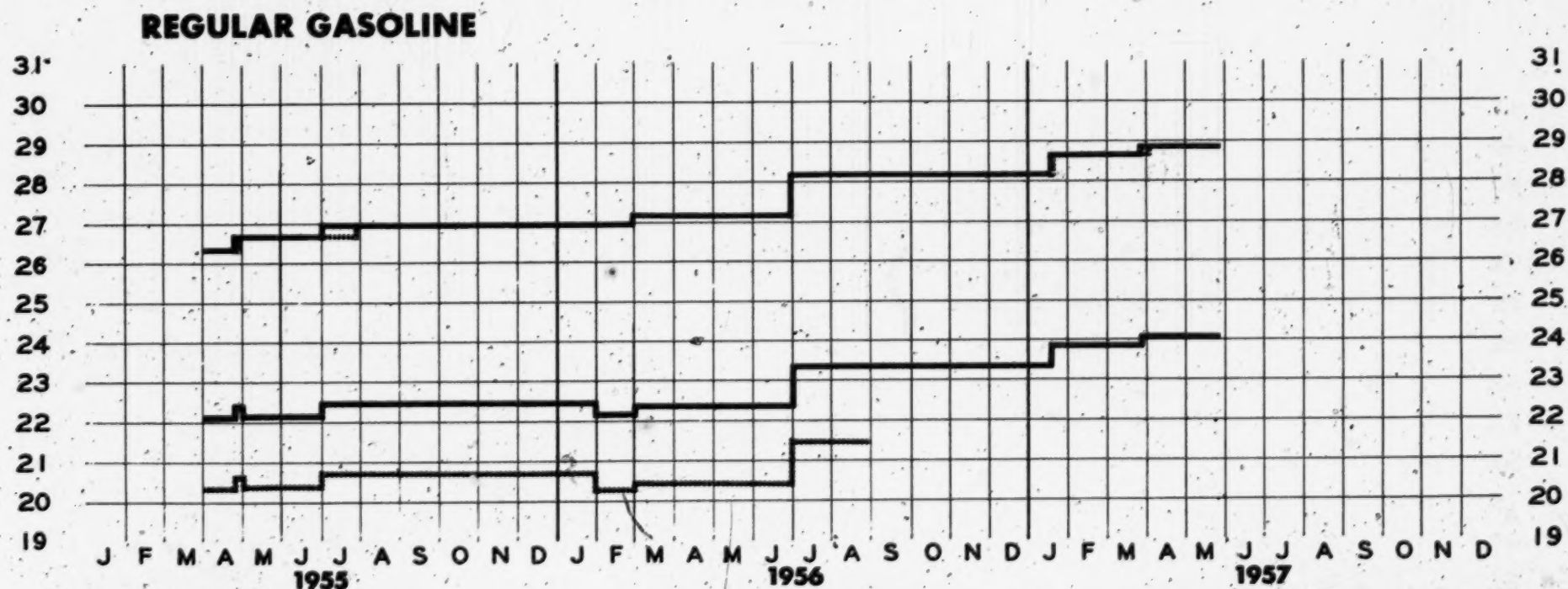
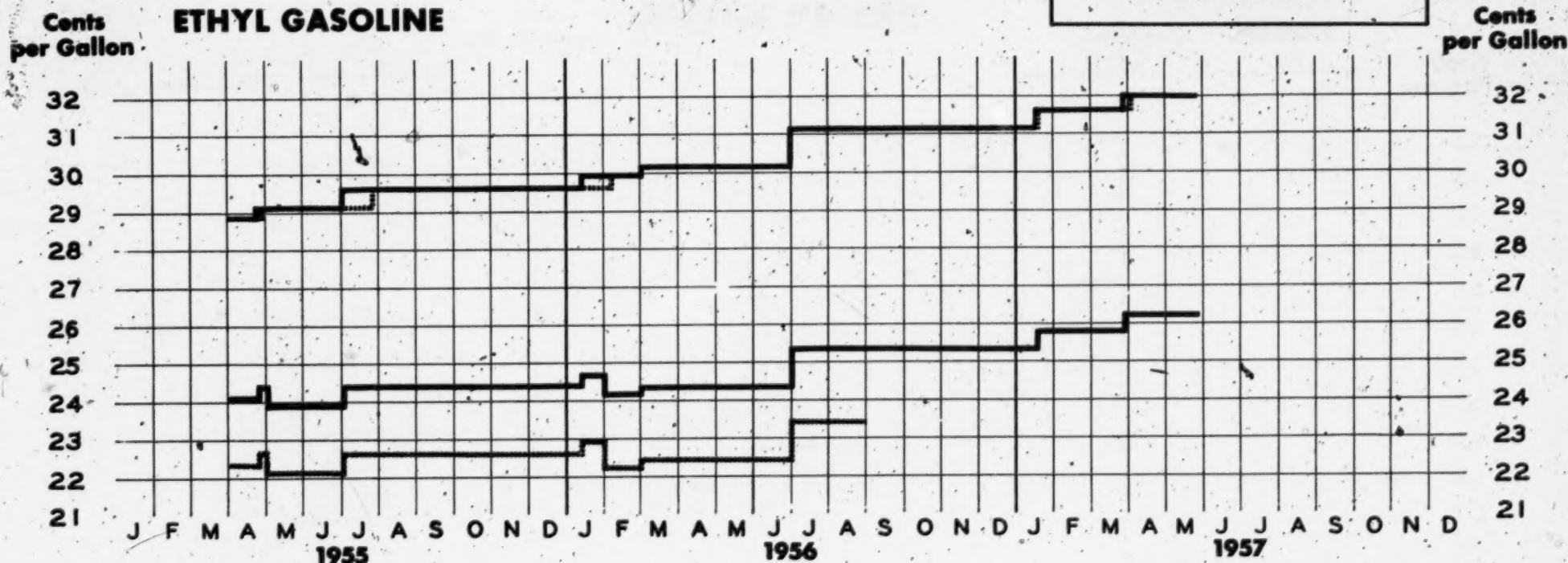
Based on Exhibits 1457a and 1493

Data showing price to Perkins without Freight Allowance and price to Perkins' Customers omitted.



## GASOLINE PRICES

COOS BAY, OREGON



— STANDARD'S prices to Chevron Dealers  
 — STANDARD'S prices to Signal Dealers

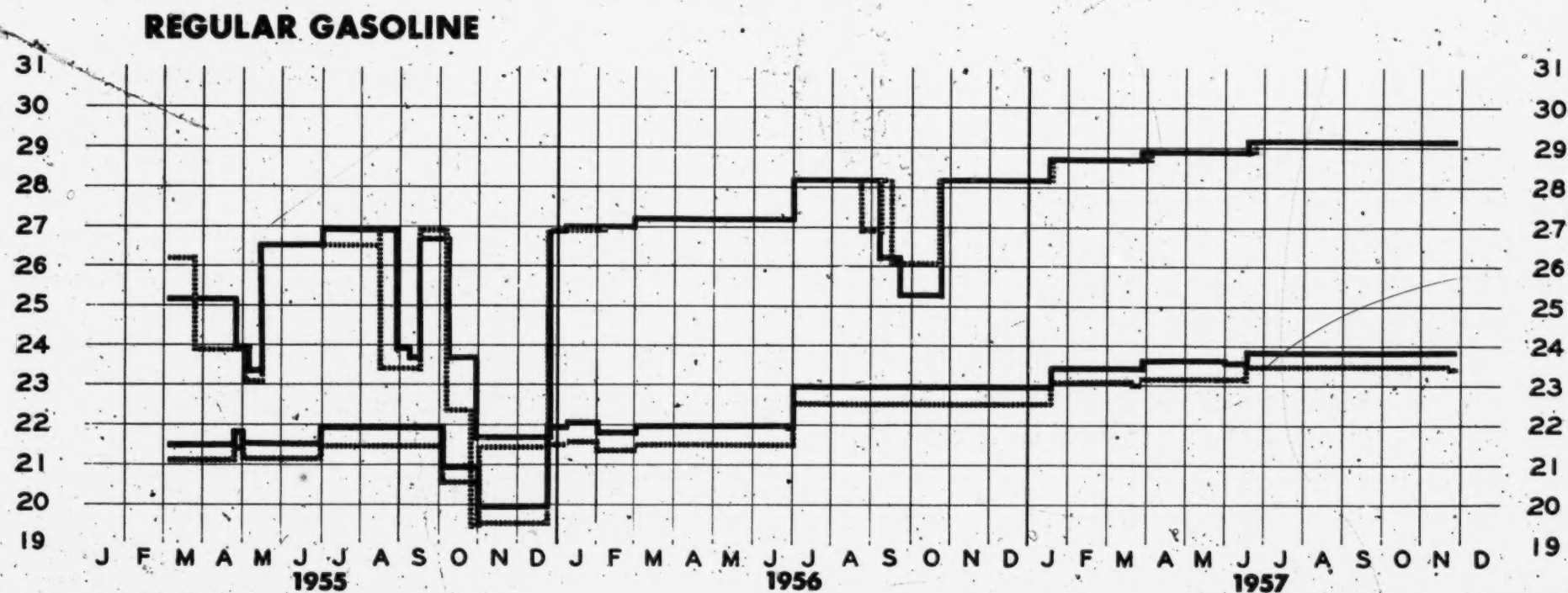
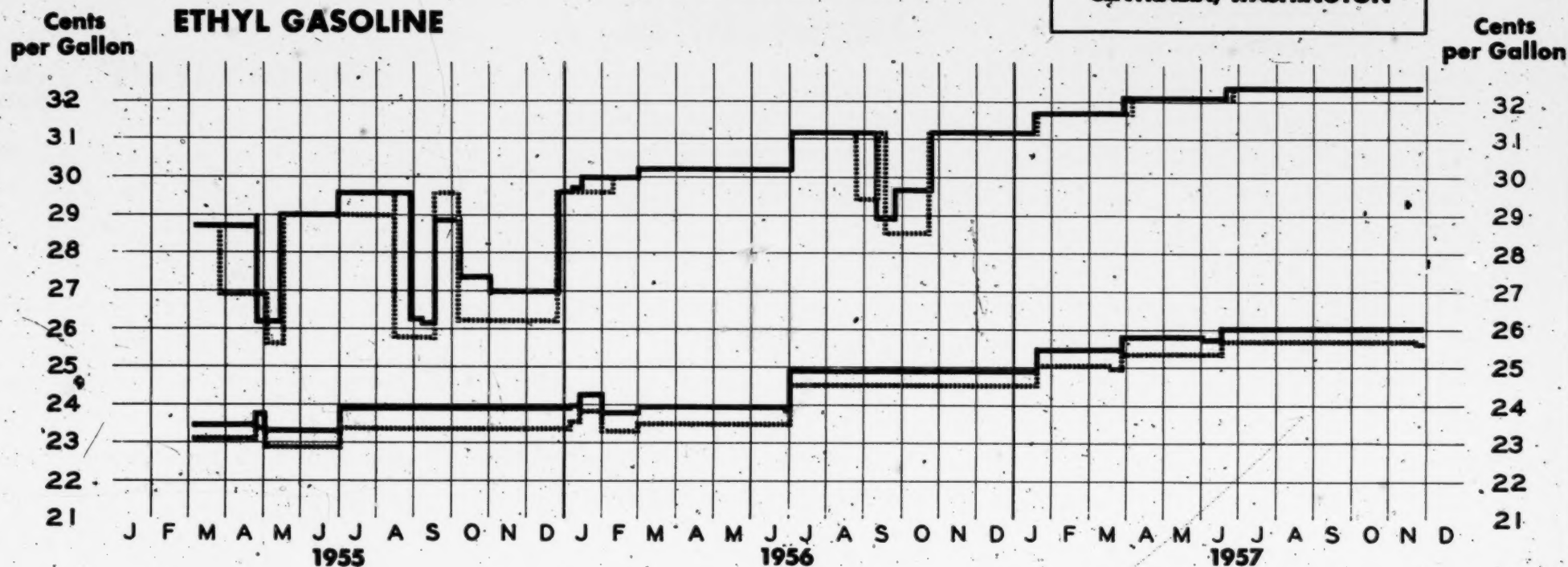
STANDARD'S prices to PERKINS -

Destination: COOS BAY  
 Supply Point: COOS BAY  
 Supply Point: WILLBRIDGE

Based on Exhibits 1457a, 1463, and 1494  
 Data showing price to Perkins without Freight Allowance  
 and price to Perkins' Customers omitted.

## GASOLINE PRICES

CENTRALIA, WASHINGTON



— STANDARD'S prices to Chevron Dealers  
 ..... STANDARD'S prices to Signal Dealers

STANDARD'S prices to PERKINS -  
 Destination: CENTRALIA  
 Supply Point: ABERDEEN  
 Supply Point: WILLBRIDGE

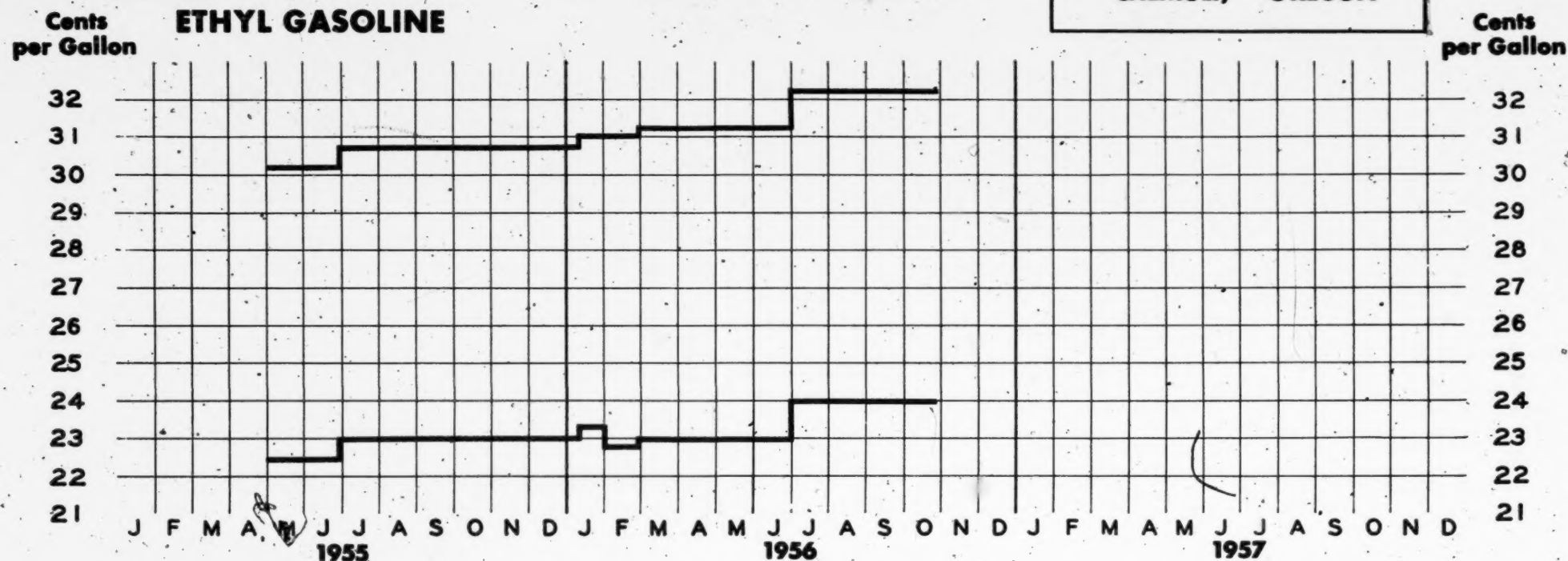
Based on Exhibits 1457a, 1463, and 1497  
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 and price to Perkins' Customers omitted.



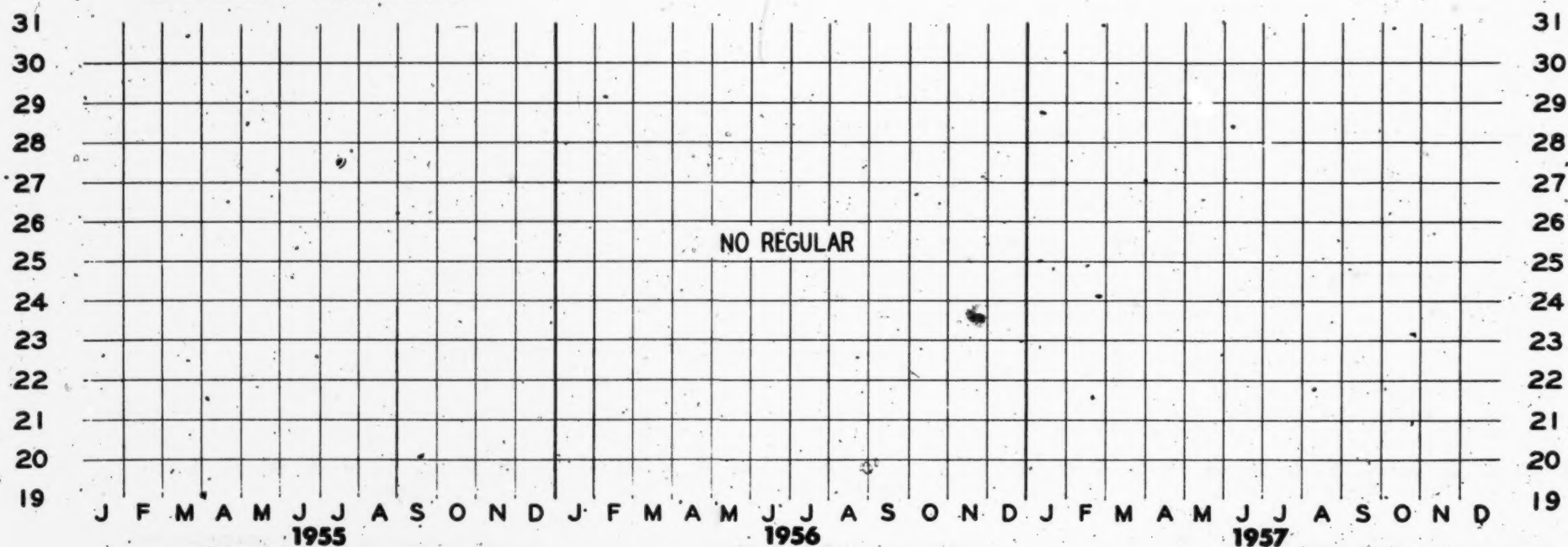
## GASOLINE PRICES

CHEMULT, OREGON

ETHYL GASOLINE



## REGULAR GASOLINE



STANDARD'S prices to Chevron Dealers

STANDARD'S prices to PERKINS -

Supply Point: WILLBRIDGE

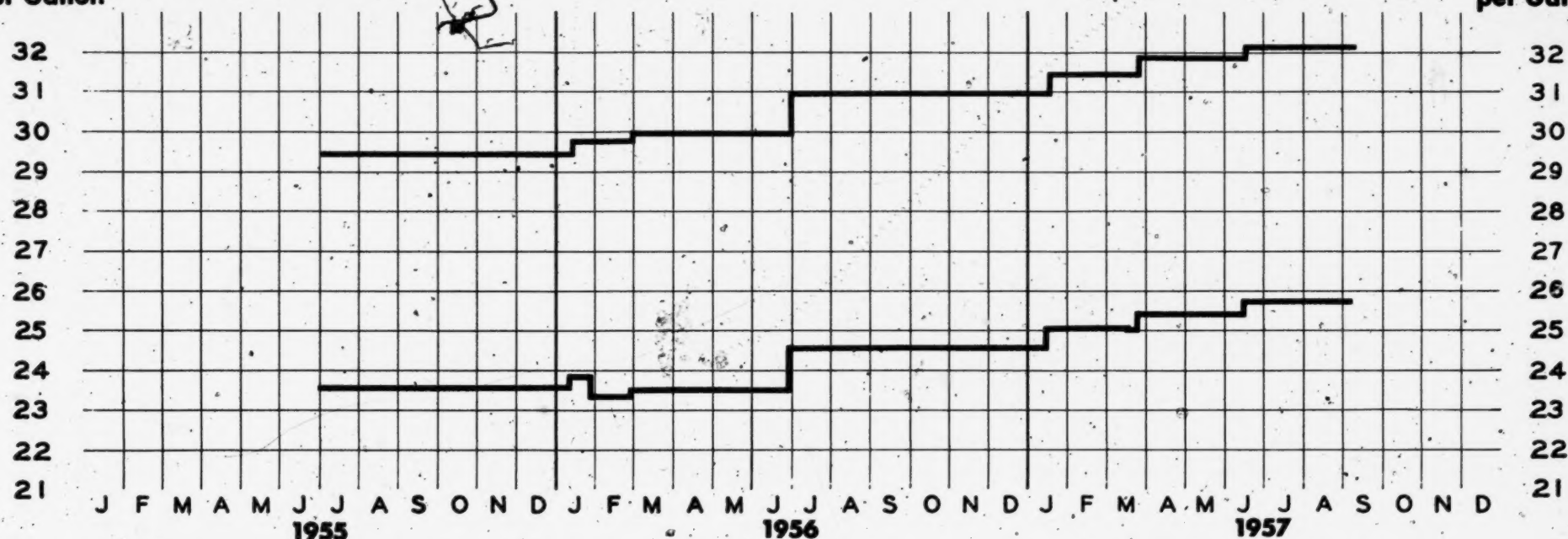
Based on Exhibits 1457a and 1499  
 Data showing price to Perkins without Freight Allowance  
 and price to Perkins' Customers omitted.

## GASOLINE PRICES

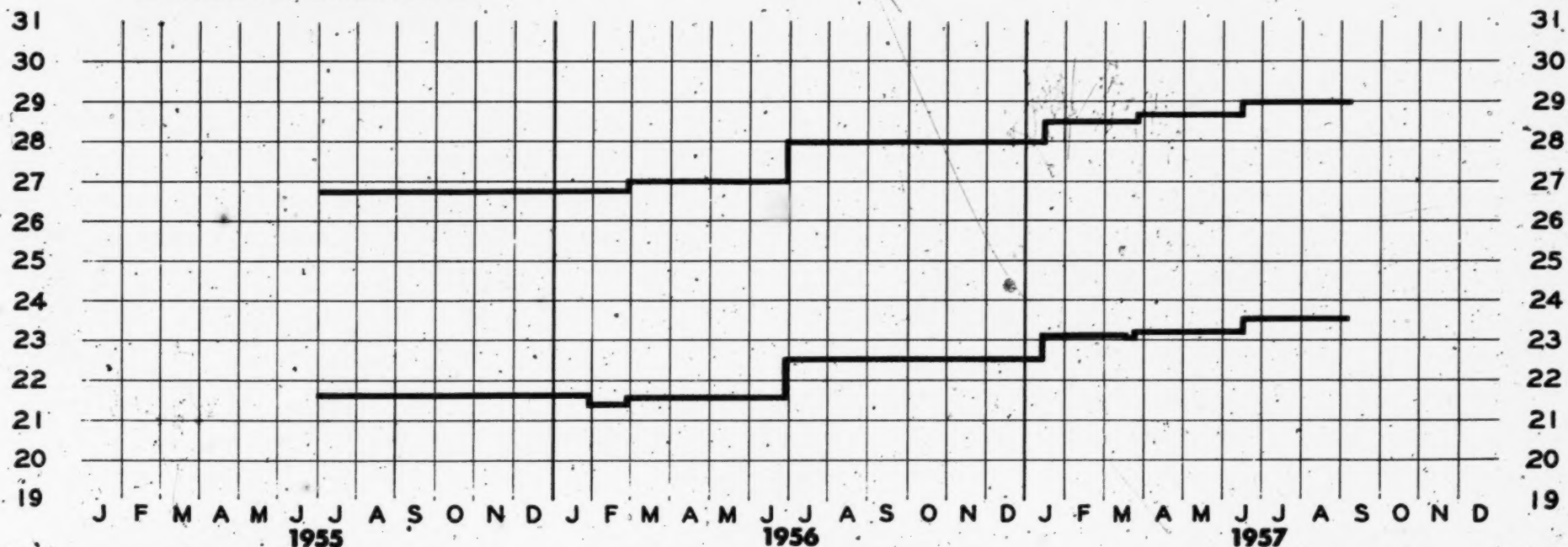
WHITE SALMON, WASHINGTON

Cents  
per Gallon

ETHYL GASOLINE

Cents  
per Gallon

## REGULAR GASOLINE



— STANDARD'S prices to Chevron Dealers

STANDARD'S prices to PERKINS -

Destination: WHITE SALMON

— Supply Point: WILLBRIDGE

Based on Exhibits 1457a and 1500

Data showing price to Perkins without Freight Allowance and price to Perkins' Customers omitted.

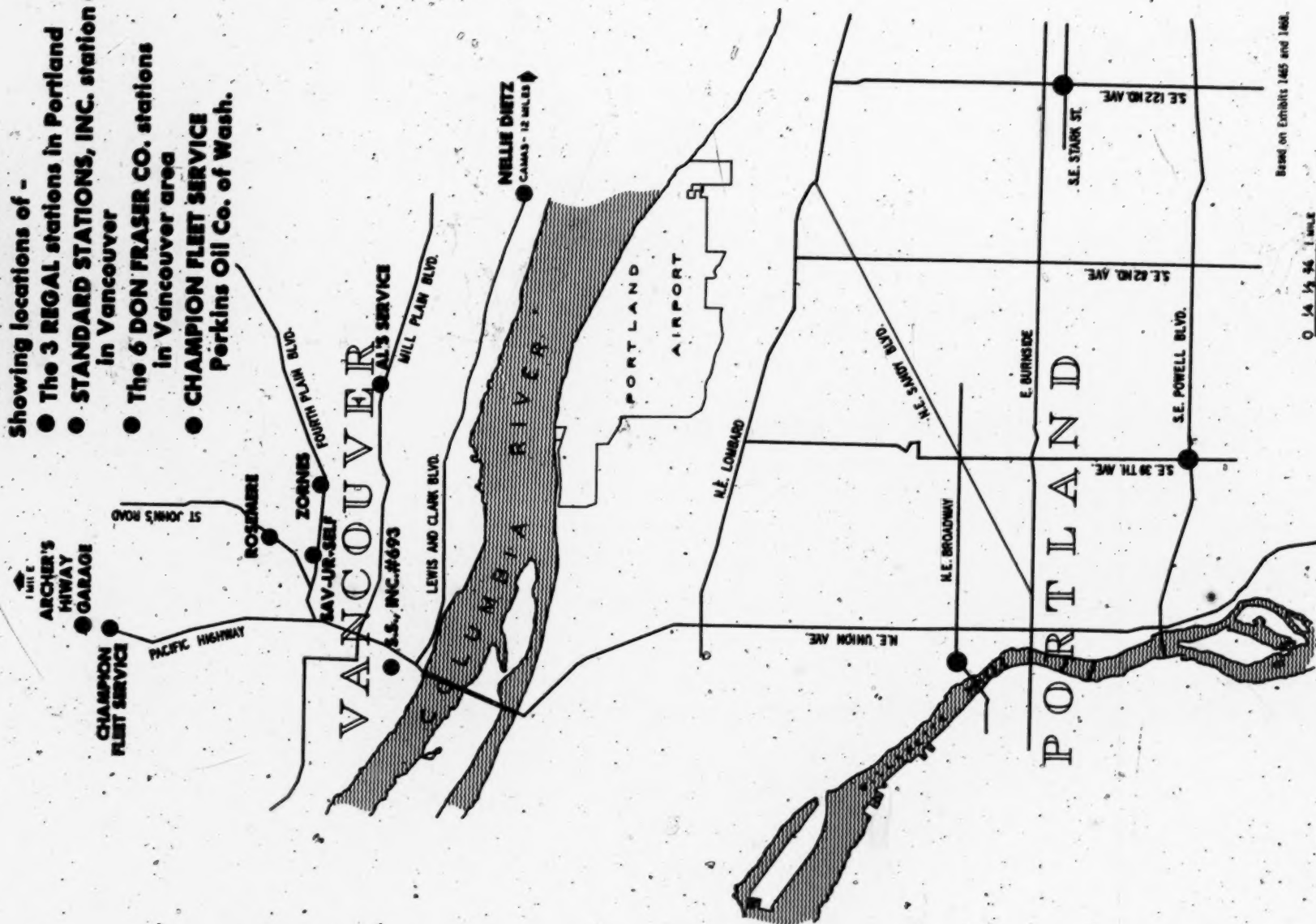


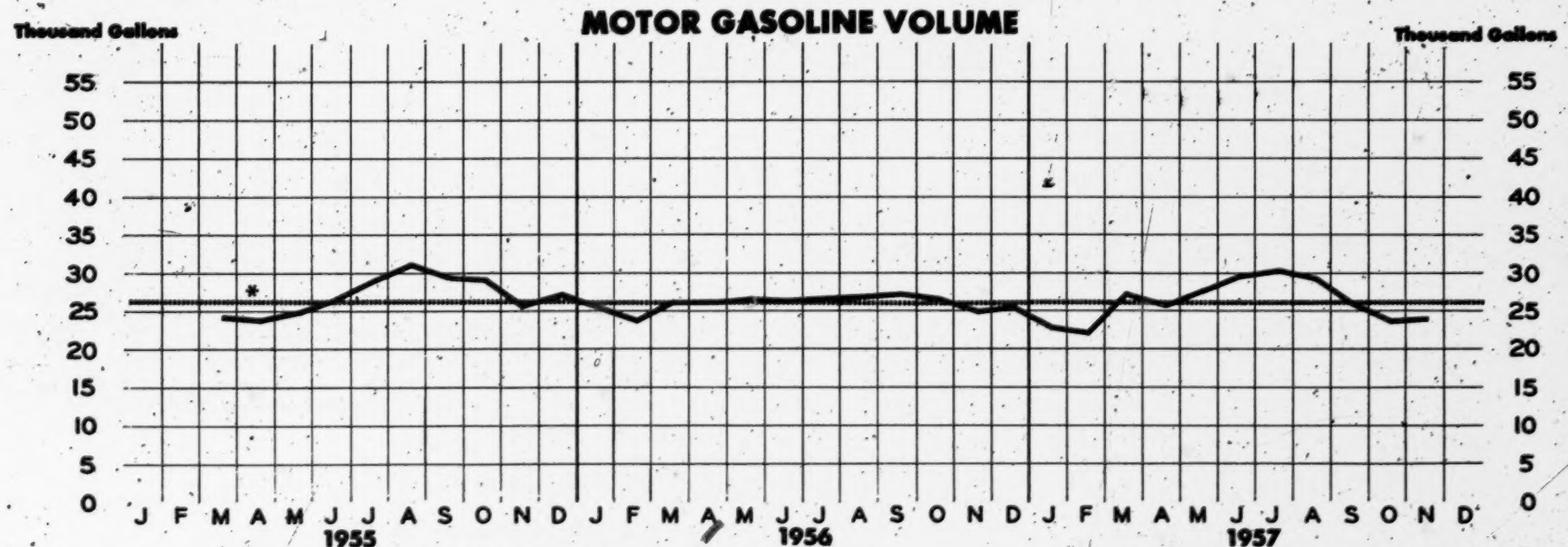
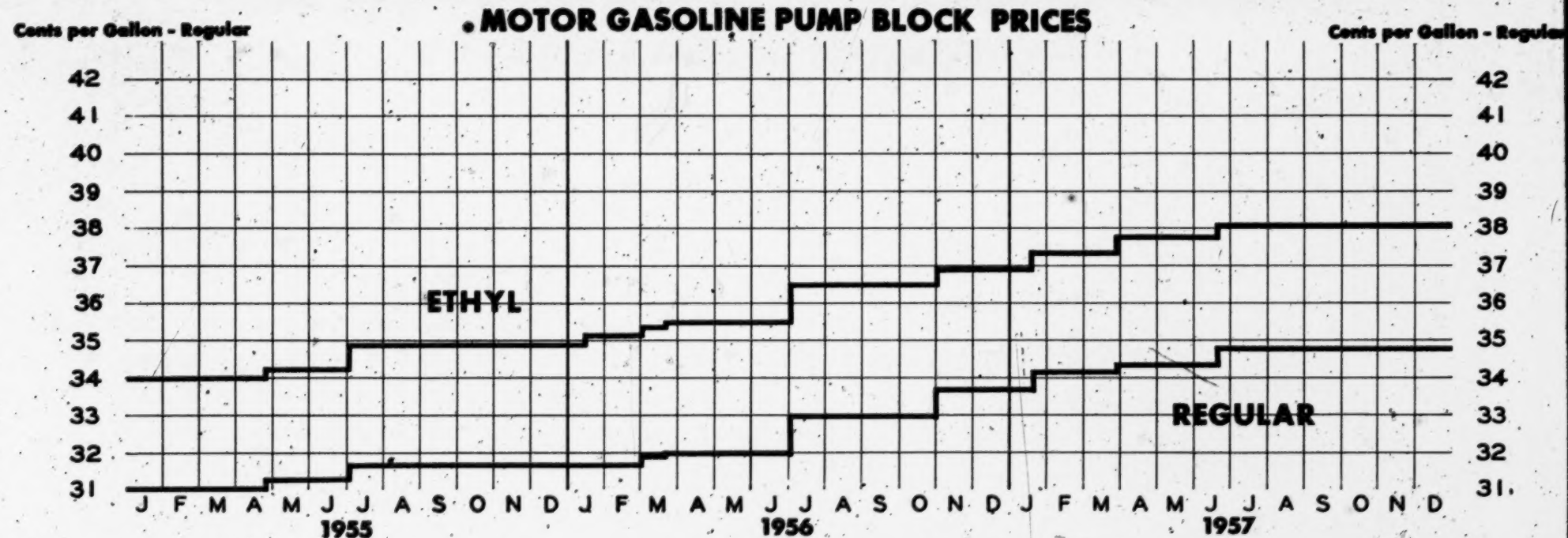
Based on Exhibit Nos. 1465 and 1468

# MAP OF PORTLAND - VANCOUVER AREA

Showing locations of -

- The 3 REGAL stations in Portland
- STANDARD STATIONS, INC. station 693 in Vancouver
- The 6 DON FRASER CO. stations in Vancouver area
- CHAMPION FLEET SERVICE Perkins Oil Co. of Wash.



**STANDARD STATIONS, INC. 693 - VANCOUVER, WASH.**

\* AVERAGE FOR 1955 BASED ON 11 MOS. ACTUALS - JULY EST.



152234A  
(351A) Rmt/Ratio  
Locality 71-1

Retail Price Area: Portland

Locality #1-B

\*This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.



(951.8) R<sub>12/2</sub> R<sub>12/10</sub>

Retail Price Area: Portland Locality 49-A

\*This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.

(SSIC) QTR 12 R 12/10

Locality #12-A

\*This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.



RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER

1523 E

(351D) Rr r/2 R r/10

**Posted Price: Albany**

**Retail Price Area:** Albany

Locality #76-A

[illegible]

\*This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.







6/24/18

Locality #78

"This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.

RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER

1523 I  
(551H) Rnz Rnz/10

**Posted Price: Roseburg**

Retail Price Area: Roseburg

Locality #78-A

[illegible]

\*This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.



(351 I) RTH/2 R4/10

Locality #60-I

[illegible]

40-19570





Radio

Locality #118

REGULAR					NPHYL				
Date	*Prevailing Retail Price	PTT	RPA	Net Price To Dealer	*Prevailing Retail Price	PTT	RPA	Net Price To Dealer	
1-24-55	31.2	26.2	-	-	31.2	28.7	-	-	
1-22-55	31.5	26.5	-	-	31.9	29.0	-	-	
2-20-55	31.9	26.5	-	-	31.9	29.0	-	-	
2-22-55	32.3	26.9	-	-	32.5	29.6	-	-	
11-4-55	26.9	26.9	-	-	31.9	29.6	-	-	
2-19-55	31.9	26.9	-	-	31.9	29.6	-	-	
1-4-56	32.4	27.0	-	-	35.6	29.7	-	-	
1-12-56	32.4	27.0	-	-	35.9	30.0	-	-	
2-28-56	32.6	27.2	-	-	36.1	30.2	-	-	
3-16-56	32.7	27.2	-	-	36.2	30.2	-	-	
7-1-56	33.7	28.2	-	-	37.2	31.2	-	-	
1-17-57	34.2	28.7	-	-	37.7	31.7	-	-	
3-26-57	34.4	28.9	-	-	38.1	32.1	-	-	
5-18-57	34.7	29.2	-	-	38.4	32.4	-	-	

\*This is the Retail Price, in most instances, charged by the SS Inc. outlets in the area; if no such SS Inc. outlet, then the Retail price charged by a predominate number of major competitors.



1523A

1523N-CC, R412/10

	RETAIL PRICE,	POSTED TANK TRUCK PRICE, NET PRICE TO DEALER
1000	1000	1000
2000	2000	2000
3000	3000	3000
4000	4000	4000
5000	5000	5000
6000	6000	6000
7000	7000	7000
8000	8000	8000
9000	9000	9000
10000	10000	10000
11000	11000	11000
12000	12000	12000
13000	13000	13000
14000	14000	14000
15000	15000	15000
16000	16000	16000
17000	17000	17000
18000	18000	18000
19000	19000	19000
20000	20000	20000
21000	21000	21000
22000	22000	22000
23000	23000	23000
24000	24000	24000
25000	25000	25000
26000	26000	26000
27000	27000	27000
28000	28000	28000
29000	29000	29000
30000	30000	30000
31000	31000	31000
32000	32000	32000
33000	33000	33000
34000	34000	34000
35000	35000	35000
36000	36000	36000
37000	37000	37000
38000	38000	38000
39000	39000	39000
40000	40000	40000
41000	41000	41000
42000	42000	42000
43000	43000	43000
44000	44000	44000
45000	45000	45000
46000	46000	46000
47000	47000	47000
48000	48000	48000
49000	49000	49000
50000	50000	50000
51000	51000	51000
52000	52000	52000
53000	53000	53000
54000	54000	54000
55000	55000	55000
56000	56000	56000
57000	57000	57000
58000	58000	58000
59000	59000	59000
60000	60000	60000
61000	61000	61000
62000	62000	62000
63000	63000	63000
64000	64000	64000
65000	65000	65000
66000	66000	66000
67000	67000	67000
68000	68000	68000
69000	69000	69000
70000	70000	70000
71000	71000	71000
72000	72000	72000
73000	73000	73000
74000	74000	74000
75000	75000	75000
76000	76000	76000
77000	77000	77000
78000	78000	78000
79000	79000	79000
80000	80000	80000
81000	81000	81000
82000	82000	82000
83000	83000	83000
84000	84000	84000
85000	85000	85000
86000	86000	86000
87000	87000	87000
88000	88000	88000
89000	89000	89000
90000	90000	90000
91000	91000	91000
92000	92000	92000
93000	93000	93000
94000	94000	94000
95000	95000	95000
96000	96000	96000
97000	97000	97000
98000	98000	98000
99000	99000	99000
100000	100000	100000

Posted Price: Salem, Oregon

[illegible][illegible]

RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER

Posted Price: Roseburg, Oregon

[illegible]













1523 X

1523 X

SIGNAL OIL COMPANY

RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER

Service Station Address: 1001 N. Pearl, Centralia, Washington (431-6)

Posted Price: Centralia, Washington

Signal Regular					
Date	Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
8-14-55	.284	.269	.035		.224
9-16-55		.269	-		.269
10-5-55	.269	.269	.045		.224
10-24-55	.239	.269	.075		.194
11-1-55	.249	.269	.055		.214
12-20-55		.269			.269
8-20-56	.319	.282	.0125		.2695
9-10-56		.282			.282
9-14-56	.319	.282	.0215		.2605
10-20-56		.282	-		.282

Signal Ethyl				
Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
.319	.296	.0385		.2575
	.296	-		.296
.319	.296	.0335		.2625
.319	.296	.0335		.2625
.309	.296	.0335		.2625
	.296			.296
.349	.312	.0175		.2945
	.312			.312
.339	.312	.0265		.2855
	.312	-		.312

L 10 1303



1523 Y

1523 Y

SIGNAL OIL COMPANYRETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALERService Station Address: 220 E. Main, Centralia, Washington

(431-4)

Posted Price: Centralia, WashingtonSignal Regular

Date	Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
3-24-55	.279	.262	.023		.239
5-1-55	.267	.265	.034		.231
5-15-55		.265	-		.265
8-14-55	.284	.269	.035		.234
9-16-55		.269	-		.269
10-5-55	.269	.269	.045		.224
10-24-55	.239	.269	.075		.194
11-1-55	.249	.269	.055		.214
12-20-55		.269	-		.269
8-20-56	.289	.282	.0125		.2695
9-10-56		.282	-		.282
9-14-56	.284	.282	.0215		.2605
10-20-56		.282	-		.282

Signal Ethyl

Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
.319	.287	.018		.269
.302	.290	.034		.256
	.29	-		.290
.319	.296	.0385		.2575
	.296	-		.296
.319	.296	.0335		.2625
.319	.296	.0335		.2625
.309	.296	.0335		.2625
	.296	-		.296
.319	.312			.312
	.312	-		.312
.314	.312	.0265		.2855
	.312	-		.312

+ 1963

1523Z

SIGNAL OIL COMPANY

RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER

Service Station Address: 1600 So. Gold, Centralia, Washington (431-9)

Posted Price: Centralia, Washington

Signal Regular					
Date	Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
3-24-55	.279	262	.023		.239
5-1-55	.267	265	.034		.231
5-15-55		265			.265
8-14-55	.284	269	.035		.234
9-16-55		269			.269
10-5-55	.269	269	.045		.224
10-24-55	.239	269	.075		.194
11-1-55	.249	269	.055		.214
12-20-55		269			.269
8-20-56	.289	282	.0125		.2695
9-10-56		282			.282
9-14-56	.289	282	.0215		.2605
10-20-56		282			.282

Signal Ethyl				
Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
.319	.287	.018		.269
.302	.290	.034		.256
	.290			.290
.319	.296	.0385		.2575
	.296			.296
.319	.296	.0335		.2625
.319	.296	.0335		.2625
.309	.296	.0335		.2625
	.296			.296
.319	.312			.312
	.312			.312
.319	.312	.0265		.2855
.319	.312			.312

7  
to 143

1523 AA

SIGNAL OIL COMPANYRETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALERService Station Address: 217 W. Main Street, Centralia, Washington (PL 431-9)Posted Price: Centralia, Washington

Signal Regular					
Date	Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
3-24-55	.279	.262	.023		.239
✓ 5-1-55	.267	.265	.034		.231
5-15-55		.265	-		.265
✓ 8-14-55	.284	.269	.035		.234
9-16-55		.269	-		.269
✓ 10-5-55	.269	.269	.045		.224
✓ 10-24-55	.239	.269	.075		.194
✓ 11-1-55	.249	.269	.055		.214
12-20-55		.269	-		.269
✓ 8-20-56	.319	.282	.0125		.2695
9-10-56		.282	-		.282
✓ 9-14-56	.319	.282	.0215		.2605
10-20-56		.282	-		.282

Signal Ethyl				
Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
.319	.287	.018		.269
.302	.290	.034		.256
	.290	-		.290
.319	.296	.0385		.2575
	.296			.296
.319	.296	.0335		.2625
.319	.296	.0335		.2625
.309	.296	.0335		.2625
	.296	-		.296
.349	.312	.003		.309
	.312	-		.312
.349	.312	.0265		.2885
	.312	-		.312

1723 BB  
1523 BB

SIGNAL OIL COMPANY

RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER

Service Station Address: 1002 S. Gold, Centralia, Washington (431-2)

Posted Price: Centralia, Washington

Date	Signal Regular				Net Price To Dealer
	Prevailing Retail Price	PTT	TPA	Day to Day	
3/24/55	.279	.262	.023		.239
5/1/55	.267	.265	.034		.231
5/15/55		.265	---		.265
8/14/55	.284	.269	.035		.234
9/16/55		.269	---		.269
10/5/55	.269	.269	.045		.224
10/24/55	.239	.269	.075		.194
11/1/55	.249	.269	.055		.214
12/20/55		.269	---		.269
8/20/56	.289	.282	.0125		.2695
9/10/56		.282	---		.282
9/14/56	.289	.282	.0215		.2605
10/20/56		.282	---		.282

Signal Ethyl				
Prevailing Retail Price	PTT	TPA	Day to Day	Net Price To Dealer
.319	.287	.018		.269
.302	.290	.034		.256
	.290			.290
.319	.296	.0385		.2575
	.296			.296
.319	.296	.0335		.2625
.319	.296	.0335		.2625
.309	.296	.0335		.2625
	.296			.296
.319	.312	---	----	.312
	.312	---	----	.312
.319	.312	.0265	----	.2855
	.312	---	----	.312



1523cc

**RETAIL PRICE, POSTED TANK TRUCK PRICE,  
NET PRICE TO DEALER**

Posted Price: Centralia, Washington

[illegible][illegible]

## Defendant's Exhibit No. 1550-B

Exhibit	1550-B
Case	364-51
Date	
Rptr	<i>Recd</i>
Clerk	

MEMORANDUM

San Francisco, California  
January 18, 1957

SIGNAL OIL & GAS COMPANY  
SPECIAL ADJUSTMENT

MR. D. F. GODFREY:

Please refer to your recommendation of January 16 on this subject. It is Mr. E. J. McClanahan's feeling that it would be preferable to use the exact figure in making this adjustment so that we have an actual calculation to tie it to for future application of the adjustment formula.

Accordingly, there is attached a check in the amount of \$394,735 which you are authorized to present to Signal Oil & Gas Company in accordance with your plan. I will be interested in any reactions you may have after they receive this check.

H. G. AVESPER  
*H. G. AVESPER*

Attachment

*Recd 4 p.m. 1/21  
Planned 4:30 p.m. at his home at 4:45  
He will be in office tomorrow and  
I will present to him then.*

*Handed check to OWSM  
3:24 p.m. Jan 22, 1957*

## Defendant's Exhibit No. 1550-B-1

Exhibit	1550-B-1
Case	51-1-57
Date	Rptr Recd
	Clerk

MEMORANDUM

February 21, 1957

SO&G CO. SPECIAL ADJUSTMENT

I was in the office of Bud March last evening when he told me that the subject of the Special Adjustment came up at yesterday's Board Meeting. He said that his understanding from me was that the check given them for the period ending December 31, 1956, was a Special Adjustment with no strings or commitments, and without any obligation on Standard's part to make future adjustments.

Mr. Mosher's understanding is that the adjustment will continue until they are informed by Standard that it has been terminated.

I telephoned Mr. Vesper this morning and informed him of this, and he switched me to Mr. McClanahan.

Mr. McClanahan confirmed Mr. Mosher's understanding, and indicated that it is something which will probably continue until we reach an agreement or come to the parting of the ways. We can, however, as Mr. Mosher understood it, terminate the arrangement at any time upon informing SO&G Co. Until they are so informed, the adjustment will remain in effect.

I phoned Mr. Vesper and so informed him.

Later this morning, I called upon Bud March and informed him accordingly. We agreed, however, that this would be treated confidentially between us so his sales organization would not think in terms of the long margin.

Exhibit 1550  
Case 369-59  
Per  
Clerk  
Date

COMPARISON OF STANDARD'S NET PRICES TO SIGNAL OIL AND GAS COMPANY  
AT WILBRIDGE WITH STANDARD'S NET PROCEEDS PAYABLE FROM  
C. A. PERKINS AT WILBRIDGE-DESTINATION VANCOUVER

REGULAR GASOLINE

Signal Oil and Gas Company

C. A. Perkins

Difference between  
Signal Oil and Gas  
Company Net Prices  
and C. A. Perkins  
Net Proceeds

Net Proceeds Payable  
to Standard at  
Wilbridge-Destination  
Vancouver Ex Tax

Date	Wilbridge Posted Price Ex Tax	Contract Discount	Adjust- ments	Total Discount	Posted Price Suspensions	Net Price	Difference between Signal Oil and Gas Company Net Prices and C. A. Perkins Net Proceeds
*8/27/56-12/31/56	.174	.045		.045		.129	.0020
1/1/57-1/16/57	.174	.045	.0066 <sup>2</sup>	.0516		.1224	(.0038)
1/17/57-3/18/57	.179	.045	.0066 <sup>2</sup>	.0516		.1274	(.0038)
3/19/57-3/25/57	.179	.045	.0066 <sup>2</sup>	.0516		.1274	(.003635)
3/26/57-3/31/57	.181	.045	.0066 <sup>2</sup>	.0516	.002	.1274	(.003635)
4/1/57-4/2/57	.181	.045	.0068 <sup>3</sup>	.0518	.002	.1272	(.003835)
4/3/57-6/17/57	.181	.045	.0068 <sup>3</sup>	.0518		.1292	(.003335)
6/18/57-6/21/57	.184	.045	.0068 <sup>3</sup>	.0518	.003	.1292	(.003335)
6/22/57-6/23/57	.184	.045	.0068 <sup>3</sup>	.0518	.003	.1292	(.003835)
6/24/57-6/30/57	.184	.045	.0068 <sup>3</sup>	.0518		.1322	(.003335)
7/1/57-11/20/57	.184	.045	.0075	.0525		.1315	(.004535)
11/21/57-12/2/57	.184	.045	.0075	.0525		.1315	(.00437)

1. In January, 1957 a payment was agreed upon and made by Standard to Signal Oil and Gas Company upon the basis of \$.0065 per gallon of gasoline delivered by Standard to Signal Oil and Gas Company during the period 8/27/56 through 12/31/56.
2. The amount of the adjustment on a per gallon basis was .006624 which was rounded off to .0066.
3. The amount of the adjustment on a per gallon basis was .006784 which was rounded off to .0068.
- \* Date of first delivery to Signal Oil and Gas Company at Wilbridge.



Defendant's Exhibit No. 1550-C-2

COMPARISON OF STANDARD'S NET PRICES TO SIGNAL OIL AND GAS COMPANY  
AT WILLBRIDGE WITH STANDARD'S NET PROCEEDS PAYABLE FROM  
C. A. PERKINS AT WILLBRIDGE-DESTINATION VANCOUVER

ETHYL GASOLINE

Signal Oil and Gas Company

C. A. Perkins

Date	Willbridge Posted Price Ex Tax	Contract Payments	Adjust- ments	Total Discount	Posted Price Suspensions	Net Price	Net Proceeds Payable to Standard at Willbridge-Destination Vancover - Ex Tax	Difference between Signal Oil and Gas Company Net Proceeds and C. A. Perkins Net Proceeds
8/27/56-12/31/56	.204	.055		.055		.149	.1462	.0028
1/1/57-1/16/57	.204	.055	.0066 <sup>2</sup>	.0616		.1424	.1462	(.0038)
1/17/57-3/18/57	.209	.055	.0066 <sup>2</sup>	.0616		.1474	.1512	(.0038)
3/19/57-3/25/57	.209	.055	.0066 <sup>2</sup>	.0616		.1474	.151035	(.003535)
3/26/57-3/31/57	.213	.055	.0066 <sup>2</sup>	.0616	.004	.1474	.151035	(.003535)
4/1/57-4/2/57	.213	.055	.0068 <sup>3</sup>	.0618	.004	.1472	.151035	(.003535)
4/3/57-6/17/57	.213	.055	.0068 <sup>3</sup>	.0618		.1512	.155035	(.003335)
6/18/57-6/21/57	.216	.055	.0068 <sup>3</sup>	.0618	.003	.1512	.155035	(.003335)
6/22/57-6/23/57	.216	.055	.0068 <sup>3</sup>	.0618	.003	.1512	.158035	(.003335)
6/24/57-6/30/57	.21	.055	.0068 <sup>3</sup>	.0618		.1542	.158035	(.003335)
7/1/57-11/20/57	.216	.055	.0075	.0625		.1535	.158035	(.003535)
1/21/57-12/2/57	.216	.055	.0075	.0625		.1535	.15787	(.00657)

1. In January, 1957 a payment was agreed upon and made by Standard to Signal Oil and Gas Company upon the basis of \$ .0066 per gallon of gasoline delivered by Standard to Signal Oil and Gas Company during the period 8/27/56 through 12/31/56.
2. The amount of the adjustment on a per gallon basis was .006624 which was rounded off to .0066.
3. The amount of the adjustment on a per gallon basis was .0066784 which was rounded off to .0068.
4. Date of first delivery to Signal Oil and Gas Company at Willbridge.

1550-C-2  
Case 368-57  
Date 3/28/57  
Clerk [Signature]

Exhibit 1624	Defendant's Exhibit No. 1624
Case 369-59	MEMORANDUM
Rptr	
Date	Clerk

Los Angeles, California  
October 17, 1957

OWEN L. GIL & CO. CO.  
Special Agent - Third Circuit

MR. H. C. VANDERBILT  
San Francisco -

The attached statement shows the SOG Co. "Special Agent" for the Third Quarter of 1957, calculated to 1.0% - but with 1.5% increase. Our sales to SOG Co. were 23,127,700 gallons. This calculation is based on each of the two factors shown the following results:

23,127,700 gallons @ 1.0% = \$232,722.00  
23,127,700 gallons @ 1.5% = \$347,575.50

Difference \$114,853.50 - 1.5% increase

The question, of course, is: what factor should apply - the 1.0% or the 1.5%? In answering this question, these basic points might be noted:

1. Over a three year period of the SOG Co. contracts, the gasoline prices have been quite favorable to them, and they are now in a position to have a competitive with the unusually low prices of the market, normally, etc.
2. The price is definitely better than our 5.0% (1.0% - 1.5% special adjustment). It is probably 1.0% and possibly by as much as .5%.
3. The price is temporary; but, in effect, it is not. The price will change from month to month. The price established would be hard to change without a new contract.
4. The supply, at least at the moment, is temporary. The demand supply has been firm.
5. Over the years, the SOG Co. made off has been valuable to us. As a result, I think few would contend that it is worth a price of 1.0% this past week in a year report, U. C. The SOG Co. talked about the possibility of making a price of 1.0% a barrel.
6. The SOG Co. contracts with SOG Co. expire next year - and we are in a position of stopped-up negotiations.

In total, this basis on each side as to what is said and reasonable, it seems to be. We shall probably have to give an increased allowance

Mr. H. G. VINTEN

-2-

October 17, 1937

if we want to keep the present gallanage and regain the lost.

At the moment, however, the points listed above seem over-looked by the single fact that S&W Co. is choosing to purchase 5% to 6% of its gasoline from Union. Then if based on reasonable judgment we were inclined to pay S&W Co. an additional \$50,000 (and in so doing establish a principle), would it be wise to agree to something? Or would we find it increasingly difficult to live with a situation of having quickly capitulated at the moment that Signal got us a bit off balance?

Regardless of what we might do eventually, it would seem reasonable that we should not quite firmly state that the 5% maximum applies. We know the fact is that after, we have, in reporting the final decision to S&W Co., might be some who think we had there been an inclination in San Francisco to grant another 1% or \$50,000, the thought was pretty well dispelled by the disturbing incident that S&W Co. was now purchasing and continuing to purchase substantial gallanage from Union; that the idea of the Special Adjustment in the first place was an internal one; that we worked out a estimate; that the whole agreed-to idea was breaking down; and that in the interim, that will surely follow, there should be something to be done. So now definitely what can be expected from S&W Co. in the near future and based on that position or information, decision could be made as to the further adjustment.

But again, after the preliminary jockeying, it looks like we may have to grant a greater allowance if we want the gallanage.

FERRY A. JAMESON

PAJ:cm  
encl.

cc: Mr. D. P. Coffey

**Defendant's Exhibit No. 1624**  
**SIGNAL OIL & GAS COMPANY**

**Third Quarter 1957**

**Signal Oil Company Division**

**Dealer Sales**

**35,685,113 Gallons**

**Rent Paid**

**\$451,412**

**Rent Received**

**324,483**

**Net Rent**

**\$125,929**

**Price Allowance**

**571,074**

**Combined**

**\$721,003**

**Per Gallon**

**1.93543**

**Base**

**.0992**

**Excess**

**1.03623**

**Deliveries to S&W Co.**

**23,127,709 Gallons**

**Special Adjustment**

**Third Quarter 1957:**

**Based on Computed Factor of 1.03623**

**\$232,711.01**

**Based on Maximum Adjustment Factor of .756**

**\$173,457.02**

**P.A.J.**  
**10/15/57**



Def Exhibit	1694
Case	369-57
Extr	Ry
Date	Clerk

Defendant's Exhibit No. 1694

## Union Oil Company of California

IN REPLY GIVE

A. C. C. Hall

OCT 7 1957

JES-GO

September 25, 1957

Signal Oil and Gas Company  
 511 West 7th Street  
 Los Angeles, California

Gentlemen:

We herewith offer to supply 4,000,000 gallons of Motor and Premium Gasolines for delivery during a sixty (60) day period starting September 26, 1957 as follows:

Loading Point	In Tank Price \$/Gallon	
	Motor	Premium
Los Angeles (Rosecrans Terminal) Delivery into Trucks and Trailers	.282	.343
San Francisco (Richmond Terminal) Delivery into Trucks and Trailers or into Barges (Olson)	.284	.346

The above prices are not firm but are to increase or decrease by the same amount that Union's posting for 7600 Gasoline at Los Angeles shall increase or decrease over or under today's posting of \$.154 per gallon.

Please indicate your acceptance of the foregoing on the attached copy of this letter and return the same to us for our record.

Very truly yours,

UNION OIL COMPANY OF CALIFORNIA

Sincerely,

Signal Oil and Gas Company

*A. L. Thompson*

9/25/57

*A. D. Gray*

Defendant's Exhibit No. 1695

Exhibit 1695  
Case 369-57  
Rpt. R.J.  
Date Clerk

Plf. Exh. 2

11/7/53

Kulmar R.P.

1177

Union Oil Company of California

AUTHORITY FOR PRICE

AFP No. 18534

NAME Signal Oil and Gas Company

Date 9/27/57

ADDRESS 811 West 7th Street  
Los Angeles 27, California

OCT 7 1957

Jobber and  
Refiner Sales

MARKETING STATION - Rosecrans Terminal  
Co. Op. ☒ Cons. ☐ Dist. ☐ Clean Refinery ☐

Commodity Motor Gasoline  
Spot Premium (98) Gasoline  
Monthly Volume 4,000,000 Gallons

SPECIAL ALLOWANCE

To establish net ex tax prices on  
Motor Gasoline and Premium (98)  
Gasoline, as indicated below:

Method of Delivery Into customer's trucks  
and trailers or barge  
as indicated:  
Bulk  
Jobber

PERIOD 60 days starting  
Sept. 26, 1957

Class of Trade

Reason for Request - Competitive Situation - Desirability of Account, etc.  
To record sale of 4,000,000 gallons of Motor Gasoline and Premium (98) Gasoline  
to be lifted by customer in his own truck and trailer or barge during a 60-day  
period starting September 26, 1957 as follows:

Loading Point	Lifting Method	Ex Tax - Price \$/Gal.	
		Motor	Premium (98)
Rosecrans Terminal	Truck/Trailer	.121	.143
Richmond Terminal	Truck/Trailer	.124	.146
Cleum Refinery	Barge	.124	.146

The above prices are not firm but are to increase or decrease by the same amount  
as the Motor Gasoline at Los Angeles shall increase or decrease  
allow.

ATTACHED AFP-18534 TO BE EFFECTIVE  
UNTIL DECEMBER 1, 1957 - NOT TO BE  
CANCELLED UNTIL 12-1-57

- A. GOCKRELL

NOV 25 1957

Rosecrans Terminal		COMMODITY	
		Premium (98) Gasoline	
PROPOSED	POLICY	PROPOSED	
.121		.143	
.121		.143	
( )			
.0032		.003	
.0008		.000	
.0009		.000	
.1161		.13	

Consignment statement from  
Equipment Absorption  
Terminal  
Transportation Expense  
Mkt. Cost & Terr. Exp. @ .73¢  
NET BACK

MEMO

Consignee Supplemental  
Discount

APPROVED BY A. Gockrell

DATE 10/1/57

FORM 04-1-57 AND  
PRINTED IN U.S.A.

## Union Oil Company of California

AUTHORITY FOR PRICE

AFP No. 18534NAME Signal Oil and Gas Company

OCT 7 1957

Date 9/27/57Jobber and  
Refiner SalesADDRESS 811 West 7th Street  
Los Angeles-17, CaliforniaTERM., DIST., OR DIV.  
H.O.S.S.MARKETING STATION — Rosecrans Terminal  
Co. Ops. ☒ Cons. ☐ Dist. ☐ Oleum RefineryCommodity Motor Gasoline  
Spot Premium (98) Gasoline  
Monthly Volume 4,000,000 Gallons

SPECIAL ALLOWANCE

To establish net ex tax prices on  
Motor Gasoline and Premium (98)  
Gasoline, as indicated below:Method of Delivery Into customer's trucks  
and trailers or barge  
as indicated.Storage Bulk  
Class of Trade JobberPERIOD 60 days starting  
Sept. 26, 1957Reason for Request — Competitive Situation — Desirability of Account, etc.  
To record sale of 4,000,000 gallons of Motor Gasoline and Premium (98) Gasoline  
to be lifted by customer in his own truck and trailer or barge during a 60-day  
period starting September 26, 1957 as follows:

Loading Point	Lifting Method	Ex Tax - Price \$/Gal.	
		Motor	Premium (98)
Rosecrans Terminal	Truck/Trailer	.121	.143
Richmond Terminal	Truck/Trailer	.124	.146
Oleum Refinery	Barge	.124	.146

The above prices are not firm but are to increase or decrease by the same amount  
that Union's posting for 7600 Gasoline at Los Angeles shall increase or decrease  
over or under today's posting of \$.184 per gallon.**CANCELLED***by app 19074  
of 11/2/57 effective  
as of dec. 1957.*

Rosecrans Terminal

GROUP NO.	COMMODITY		COMMODITY	
	Motor Gasoline		Premium (98) Gasoline	
	POLICY	PROPOSED	POLICY	PROPOSED
Net				
Posted T.W. or List Price		.121		.143
Policy Discount				
Special Discount				
NET BILLING PRICE		.121		.143
Consignee Absorption		( )		( )
Equipment Absorption				
Terminal		.0032		.0032
Transportation Expense		.0008		.0008
Mkt. Cost & Terr. Exp. @ .73%		.0009		.0009
NET BACK		.1161		.1380

MEMO

Consignee Supplemental  
Discount

cfe

APPROVED BY

*W. B. Scherrel*

DATE

*11/1/57*

INITIAL

DATE

MARKETING DEPARTMENT

30 SEP 1957

SIGNAL CUB + GWS -  
 68 = .121 } L.A.  
 78 = .143 } BAIN  
 88 = .135 } SF BAY  
 78 = .145 } T+T  
 88 = .145 } BARGE

4,000,000 GALLONS MIN.  
 BOTH GRADES  
 BOTH AREAS  
 SIX WEEKS - 60 DAYS

A. COCKMILL

OCT 7 1957

A. COCKMILL

OCT 7 1957

Letter - 9/25

offer supply

4,000,000 gals. gms

60 days. starting.

9/26.

Excluded - ant / ant  
 with amount, P54  
 today.



## Defendant's Exhibit No. 1696

Def Exhibit	1696
Case	369-59 Reg
Rptr	
Date	Clerk

Plf. Exh. K

11/14/63

K. Warner, N.P.

A. COCKNELL

LOSACOS-SFRN 2  
A D GRAY  
# 1114

SEPTEMBER 27

1957 SEP 27 AM 8:29 OCT 2 1957

RE SALE GAS TO SIGNAL OIL AND GAS, HAVE YOU THOUGHT OF SOUNDING  
SOAC OUT AS TO APPROACHING KING REGAL AND STAR AND BAR GROUP OPERATING  
S.F. SOUTH TO AND INCLUSIVE OF SAN JOSE, WE SELLING SOAC AND THEY RE-  
SELLING THE GROUP MENTIONED. OUR NEW RICHMOND TERMINAL WITH QUICK  
LOADING OF TRUCKS AND THE 97/98 OCTANE GAS BEING OFFERED TO SOAC,  
ELIMINATES TWO OF THE MAJOR ROAD BLOCKS THAT WOULD HAVE INTERFERED  
DOING BUSINESS WITH THE ABOVE GROUP.

F M JACOBS  
EL-6.15AM

Refiner &amp; jobber - also

SEP 27 1957

A. D. GRAY

SEP 27 1957

## Defendant's Exhibit No. 1697

Exhibit	1697
Case	369-59
Rptr	ny
Date	Clerk

11/1/63 P.H. Exh. L  
K. Weaver, N.P.

UNION OIL COMPANY OF CALIFORNIA

## MEMORANDUM

SUBJECT:

October 3, 1957

MLF-1450

TO: A. D. Gray

FROM: M. L. Fiske

SUBJECT: SIGNAL OIL AND GAS COMPANY

to Whinnell  
OCT 16 1957

Rosecrans turned down loading one of Acme Oil Company's 3,000 gallon capacity trucks due to this equipment being too small to fit the rubber cap to the loading arm sufficiently tight to comply with the Smog Regulation Board Vapor Recovery Program.

Tom Sheehan informs us we are subject to a large fine should the smog control man detect any vapor going into the atmosphere, since Union is already on one year probation due to one of their rigs found smoking on the highway.

This information was imparted to Mr. Shephard at Signal and he was very perturbed since he has contracted with Acme to lift this gasoline. He also stated Standard Oil always filled the small rigs for them. Acme's truck was sent out empty, and Mr. Shephard will let us know charges involved which he indicates probably will be passed on to us.

MLF:njm

A. D. GRAY

OCT 9 - 1957

J. J. LAMB

OCT 14 1957

Defendant's Exhibit No. 1698

Exhibit	1698
Case	369-57
Rptr	Ref
Date	Clerk

*Def. Exh. M*  
*11/27/63*  
*K*

NO. *44*  
 378-681

SPECIAL PRODUCT CLEARANCE

CUSTOMER: **SIGNAL OIL & GAS COMPANY AND OTHERS** DATE: **10-4-57**

TO: **MANUFACTURING DEPARTMENT** CONFIRMED: **A. DOCKRELL**

FROM: **SALES DIVISION** BY: **J. P. SIMPSON** **OCT 24 1957**

PRODUCT: **PREMIUM (90) GASOLINE - RED DIE**

QUANTITY: **30,000 GAL./MO.**

DATE REQUIRED: **STARTING SEPT. 26, 1957**

METHOD DELIVERY: **INTO TARGE 10,000 GAL./LIFTING**

F.O.B. POINT: **GLCUM REFINERY**

PROPOSED PRICE: **\$1.16/GAL.**

SPECIFICATIONS:

**A. D. GRAY**  
**OCT 15 1957**

REPLY: **Glum Refinery can supply as requested. Specifications will be Royal 76 (90-11) except:**

- |            |   |         |              |         |              |
|------------|---|---------|--------------|---------|--------------|
| 1. Color:  | Red   |         |              |         |              |
| 2. VI      | Midpoint of specification range & 25 that is:   |         |              |         |              |
|            | <table border="0"> <tr> <td>October</td> <td>Nov. Dec.</td> </tr> <tr> <td>635-745</td> <td>675-725</td> </tr> </table> | October | Nov. Dec.    | 635-745 | 675-725      |
| October    | Nov. Dec.   |         |              |         |              |
| 635-745    | 675-725   |         |              |         |              |
| 3. Octane: | ASTM definition applies, that is:   |         |              |         |              |
|            | <table border="0"> <tr> <td>KER</td> <td>97.5 minimum</td> </tr> <tr> <td>KRM</td> <td>98.5 minimum</td> </tr> </table> | KER     | 97.5 minimum | KRM     | 98.5 minimum |
| KER        | 97.5 minimum  |         |              |         |              |
| KRM        | 98.5 minimum  |         |              |         |              |

It is our understanding the Signal Oil and Gas demand is approximately one-half the above listed quantity.

WPS/aa

**A. M. GIBSON**  
**OCT 24 1957**

**J. J. LANE**  
**OCT 21 1957**

**J. P. S.**  
**14 OCT 1957**

cc A. R. Coudahl

MANUFACTURING DEPARTMENT

By Original signed by **J. P. SIMPSON**

DATE **October 18, 1957**

Exhibit 1699  
 Case 369-59  
 Rptr  
 Clerk

Defendant's Exhibit No. 1699

Pelf Ethe N  
 11/7/63  
 K Wemar NP  
 SIGNAL OIL & GAS COMPANY  
 AND OTHERS

SPECIAL PRODUCT CLEARANCE

DATE 10-1-57

TO: MANUFACTURING DEPARTMENTCONFIDENTIAL

A. DOCKRELL

FROM: SALES SERVICES

J. P. S. S. S.

OCT 24 1957

PRODUCT: PREMIUM (98) GASOLINE - RED DIE

QUANTITY: 30,000 HRL/NO.

DATE REQUIRED: STARTING SEPT. 26, 1957

METHOD DELIVERY: INTO TANKS - 10,000 HRL./LIPPING

F.O.B. POINT: COLUMBIA REFINERY

PROPOSED PRICE: \$.146/GAL.

SPECIFICATIONS:

A. D. GRAY  
OCT 15 1957

REPLY: Crown Refinery can supply as requested. Specifications will be  
 as follows: Royal 76 (NO-11) except:

1. Color: Red
2. VI: Midpoint of specification range ± 25 that is:

VI	October	Nov./Dec.
	805-745	875-725

3. Octane: ASTM definition applies, that is:

KIR	87.5 minimum
KRM	88.5 minimum

It is our understanding the Signal Oil and Gas demand is approximately  
 one-half the above listed quantity.

WFE/ha

G. M. GIBSON  
 OCT 24 1957

J. J. LANE

OCT 21 1957

J. P. S.  
 14 OCT 1957

cc A. R. Coudahl

MANUFACTURING DEPARTMENT

By Original signed by  
J. P. S. S.

DATE October 10, 1957



## Defendant's Exhibit No. 1700

Exhibit	1700
Case	369-57
Date	Ref
Repr	
Clerk	

## SPECIAL PRODUCT CLEARANCE

NO. JPS-621

*Ref. Exh. D*  
*11/7/63*  
*KW Lessor NY*

CUSTOMER: SIGNAL OIL & GAS COMPANY  
AND OTHERS

DATE 10-4-57

TO: MANUFACTURING DEPARTMENT

CONFIRMING

FROM: SALES SERVICES

BY J. P. SIFFORD

PRODUCT: PREMIUM (98) GASOLINE - REG DEX

QUANTITY: 30,000 HRL/NO.

DATE REQUIRED: STARTING SEPT. 26, 1957

METHOD DELIVERY: INTO TANKS; 10,000 HRL./LIFTING

F.O.B. POINT: OLDEM REFINERY

PROPOSED PRICE: \$.146/GAL.

SPECIFICATIONS:

REPLY: Olsem Refinery can supply as requested. Specifications will be  
~~REPLY: Olsem Refinery can supply as requested. Specifications will be~~  
Royal 76 (80-11) except:

- |           |   |
|-----------|---|
| 1. Color: | Red   |
| 2. VI     | Midpoint of specification range $\pm$ 25 that is: |

	October	Nov. Dec.
VI	695-745	675-725

- |            |                                   |
|------------|-----------------------------------|
| 3. Octane: | ASTM definition applies, that is: |
|------------|-----------------------------------|

KER	97.5 minimum
KRM	88.5 minimum

It is our understanding the Signal Oil and Gas demand is approximately one-half the above listed quantity.

WPS/m

J. P. S.  
14 OCT 1957

cc A. H. Cundahl

MANUFACTURING DEPARTMENT

By W. F. Barber

DATE October 10, 1957

4-26/2000

*copy sent to*  
*ASG Nov 10/4/57*  
*JPS*

## Defendant's Exhibit No. 1701

Exhibit	1701
Case	56-5-4
Rptr	ref.
Date	Clerk

SPECIAL PRODUCT CLEARANCE

not NP  
OIL & GAS COMPANY  
HRS

NO. JPS-681

DATE 10-4-57

TO: MANUFACTURING DEPARTMENT

CONFIRMING

FROM: SALES SERVICES

BY J. P. SIMFORD

PRODUCT: PREMIUM (98) GASOLINE - RED DYE

QUANTITY: 30,000 BBL/MO.

DATE REQUIRED: STARTING SEPT. 26, 1957

METHOD DELIVERY: INTO BARGE 10,000 BBL./LIFTING

F.O.B. POINT: OILMAN REFINERY

PROPOSED PRICE: \$.146/CAL.

SPECIFICATIONS:

REPLY: Oilman Refinery can supply as requested. Specifications will be  
~~RECEIVED~~ Royal 76 (MO-11) except:

- |           |   |
|-----------|---|
| 1. Color: | Red   |
| 2. VI     | Midpoint of specification range $\pm 25$ that is: |

	October	Nov. Dec.
VI	695-745	675-725

- |            |                                   |
|------------|-----------------------------------|
| 3. Octane: | ASTM definition applies, that is: |
|------------|-----------------------------------|

KIR	97.5 minimum
KIM	86.5 minimum

It is our understanding the Signal Oil and Gas demand is approximately one-half the above listed quantity.

WPS/aa

J. P. S.  
14 OCT 1957

cc A. N. Ousdahl

MANUFACTURING DEPARTMENT

By

W. F. Barber

DATE October 10, 1957

4-56/2000

copy sent to  
ASG Nov 10/4/57  
JPS

## Defendant's Exhibit No. 1702

Exhibit	1702
Case	369-59
Rpt'r	Ref
Date	Clerk

October 24, 1957

Mr. F. E. Caddell

Subject: Signal Oil &amp; Gas

Def. #3  
11/7/63  
K. W. COCKRELL  
OCT 24 1957

On October 1, Signal Oil & Gas began lifting motor and premium gasoline from us at Richmond and Rosecrans Terminals, committing themselves to a minimum of four million gallons over a 60-day period at the following prices:

	Rosecrans Terminal	Richmond Terminal
Premium Motor	\$ .143 .121	\$ .146 .124

For your information, we have developed that their discounts from competition for 400-gallon postings are \$.045 and \$.035 per gallon for motor and premium, respectively, which would appear to reflect the following net prices:

	Los Angeles	San Francisco
Premium Motor	\$ .151 .129	\$ .156 .134

The above would indicate that our offer was \$.008 and \$.010 below Signal Oil's present supplier's prices at Los Angeles and San Francisco, respectively. However, we are positive that such is not the case and offer the following information to substantiate our statement, which, in effect, is that our price in Los Angeles on motor gasoline is actually higher than the net price currently paid to their present supplier, and our price in the Bay Area is possibly \$.001 under competition. However, we are not quite sure of the latter.

We have been informed by a reliable source that the competitive prices as shown above are the contract prices today. However, in this contract, there is a further provision that at the end of each quarter an adjustment is made predicated on the concession made to retail accounts during the quarter in each area. For your confidential information, this rebate in the Los Angeles area during the third quarter of 1957 on motor gasoline was \$.009 per gallon, which, if still applicable, would mean that Signal Oil & Gas net price today would be \$.12 per gallon in Los Angeles. We are unable to confirm the discount allowed by their present supplier during the third quarter in the Bay Area; however, if it was the same, we then would be selling for \$.001 under their present supplier's prices.

Under the circumstances, we feel quite confident that our offer was very realistic and Signal Oil & Gas are only purchasing locally from us because they are held to contractual supplies. May we also add that in our best judgment the prices offered by us are the competitive level under which an account this size could purchase elsewhere.

J. J. LAMB

A. B. GARY, Manager  
Refiner & Jetter Sales

OCT 21 1957

AD:ms

Defendant's Exhibit No. 1703

Union Oil Company of California  
Sales of Unbranded Gasoline To Signal Oil and Gas Company  
January 1, 1956 through August 31, 1958

Exhibit 1703  
Case 369-59 Lead  
Rptr  
Date Clerk

F.O.B. Delivery Points

Year	Month	Los Angeles				Oleum Refinery				Richmond Terminal				Phoenix				Total			
		Terminal		Gallons		Motor		Premium		Motor		Premium		Motor		Premium		Motor		Premium	
		(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)	(Regular)	(Ethyl)		
1956	May													78,381							
	June													215,656							
	July													132,739							
	Aug.													100,632							
	Sept.													82,397							
	Oct.													79,860							
Total														689,865							
1957	Sept.	2,325	7,576							68,034		49,965						70,559	57,541	\$ 8,741.75	\$ 8,378.26
	Oct.	40,194	379,438	560,850		148,559				551,723		440,408						1,132,767	968,405	142,822.52	140,348.81
	Nov.	30,357	480,719	449,699	224,542					616,565		517,522						1,096,621	1,225,183	135,889.95	177,142.56
	Dec.	5,260	414,620	581,418	355,406					681,745		627,245						1,268,523	1,397,571	157,280.77	302,801.50
Total		78,436	1,282,353	1,591,967	728,907					1,918,067		1,635,440						3,388,470	3,646,700	\$ 444,734.99	\$ 528,571.13
1958	Jan.	72,906	330,074	357,206	270,818					569,364		543,345						999,476	1,144,237	\$ 123,703.20	\$ 166,068.38
	Feb.	58,504	102,521							538,764		480,078						597,268	582,599	75,829.70	84,284.74
	Mar.	27,118	57,445	409,086	173,600					1,662,432		1,482,555						2,098,633	1,713,600	260,155.48	247,718.35
	Apr.									1,503,987		1,291,211						1,503,987	1,291,211	186,494.39	187,404.58
	May									2,042,954		2,044,888						2,042,954	2,044,888	233,326.31	237,214.96
	June									2,318,883		2,100,020						2,318,883	2,100,020	287,541.49	305,541.85
	July									2,152,280		1,830,004						2,152,280	1,830,004	266,882.76	285,810.56
	Aug.									2,347,183		1,972,362						2,347,183	1,972,362	291,050.73	286,409.84
Total		158,325	490,040	766,292	444,418					13,135,847		11,744,470						14,060,664	12,678,928	\$1,742,986.06	\$1,840,033.68



## Defendant's Exhibit No. 1704

Exhibit	1704
Case	369-59
Rptr	<i>Recd</i>
Date	Clerk

Los Angeles, California  
March 18, 1955

SIGNAL OIL AND GAS COMPANY

MR. H. G. VESPER  
San Francisco -

During the past few days, I have spent several hours with Bud March, during which time Sam Mosher was present for a few minutes.

Mr. Mosher's only comment apropos of the contract situation was to express again his view that "tank truck price means absolutely nothing to anyone but Standard".

The following summarizes the statements of Mr. March to me:

He is very "disappointed and hurt" that Standard did not grant his request for a temporary increase in margin of .5¢. He says it is a one-way street with SO&G Co. doing all the favors.

He is convinced that Western Ryway can get margins of 4.50-5.50¢ on a five-year firm deal for their gasoline requirements. (I suggested he check to see if the discounts are off the same posted price as ours or off higher posting such as Union.) At another point in the conversation he dropped that Hancock and Norwalk were the companies offering the above discounts.

He also said he was sure that SO&G could get up to 12,000,000 gallons, possibly 18,000,000 gallons per month for five years firm from a major competitor at margins of 5.00¢ and 6.00¢ off. This would mean that SO&G Co. would no longer buy gasoline from Standard. He states that they are seriously considering this.

At one point, Hancock was mentioned. He claims he could get a deal with them, and he thought that a \$2,000,000 expenditure would increase Hancock's capacity sufficiently. He knew that Standard had turned down Hancock's recent proposal on products and were currently discussing a crude oil deal.

Mr. March says that Messrs. McClanahan and Mosher are planning a trip in April. He wonders what it is all about. Mr. Mosher inferred that they plan to discuss the contract.

D. F. GOLDFREY

DFG:ds

Exhibit 1705  
 Case 369-57  
 Rptr  
 Date Clerk

Defendant's Exhibit No. 1705

SIGNAL OIL AND GAS COMPANY

1705

GENERAL OFFICE, 611 WEST SEVENTH STREET

LOS ANGELES, CALIFORNIA

March 28, 1936

Mr. Darwin Godfrey, President  
 Signal Oil Company  
 611 West Seventh Street  
 Los Angeles, California

Dear Mr. Godfrey:

We have knowledge of the following offers to supply gasoline which have been made recently either by major oil companies or by companies which obtain their supplies from major oil companies.

Company Offering Price	Name of Supplier	Date of Offer	Discount Under Standard Oil Co. Posted T.T.	Price	P.O.B.
Westway	Union	3/21/36	5.2¢	5.8¢	Eugene, Oregon
Westway	Union	3/21/36	4.1¢	4.5¢	Eugene, Oregon & Medford, Oregon
Rocket	Richfield	3/21/36	3.9¢	4.4¢	Medford, Oregon
Sunset	Union	3/23/36	4.2¢	5.2¢	Oleum, Calif.
Wilshire	Associated	3/5/36	3.95¢	5.45¢	Avon, Calif.
Union	Union	3/22/36	4.40¢		Oleum, Calif.

It is our understanding that Westway is now selling to the account at the price shown in the first offer listed above and that the second and third offers were quoted on the basis of being guaranteed for a period of one year.

We believe the foregoing demonstrates that the price which we are now paying Standard Oil Company of California for gasoline is too high and we request an adjustment in that price to meet competitive conditions.

Very truly yours,

SIGNAL OIL AND GAS COMPANY

Vice President

RECEIVED

MAR 29 1936

Defendant's Exhibit No. 1706

Exhibit	1706
Case	369-59
Rptr	Paul
Date	
Clerk	

MEMORANDUM

Los Angeles, California  
September 25, 1957

SIGNAL OIL & GAS CO.

D.F.O.:

At lunch today Carl Zamloch was saying that a major oil company has offered to sell SO&G Co. gasoline at a discount greater than our discount plus "subsidy". Also, he said this company would take all of SO&G Co.'s California production of crude oil, and would take "some" Middle East crude, too.

Carl was talking pretty free and easy; and I am not at all convinced that the report is totally accurate. Yet I feel there is at least some conversational basis for it. When I commented that a spot price and arrangement is one thing and a long term contract something else, Carl made a general remark like, "Oh, it wouldn't be just for today; the price would continue."

P.A.J.

## Defendant's Exhibit No. 1707

Exhibit	1707
Case	369-59
Rptr	Recd
Date	Clerk

Los Angeles, California  
October 2, 1957

MOTOR GASOLINE DELIVERIES TO  
WESTERN HYWAY OIL COMPANY  
(SOAG CO.) BY UNION AT RICHMOND

MR. H. G. WESPER  
San Francisco -

For your information.

This afternoon I received an envelope postmarked Richmond, October 1, addressed to Signal Oil Company and bearing the return address - Union Oil Company of California, 1300 Central Drive, Richmond, California.

The envelope contained five loading tickets covering loads at Richmond to Western Hyway Oil Company of Regular and Ethyl Gasoline ranging from 8,350 to 8,640 gallons per load.

When one considers the special allowance we make to SOAG Co., this seems to support that Union prices are at least 5.25¢ - 6.25¢ off posted tank truck, and I have good reason to believe the Union prices are on the order of 5.50¢ - 6.50¢ off.

D. F. CONNEY

DFC:ag



## Defendant's Exhibit No. 1708

Exhibit	1708
Case	369-59
Rptr	mf
Date	Clerk

MEMORANDUM

Los Angeles, California  
December 30, 1957

SIGNAL OIL & GAS CO.  
Purchases from Union vs. Standard

MR. E. C. VESPER  
San Francisco -

Late Friday, Allen Shepard was asking whether Standard Oil had expressed itself further on future relations with SOG Co. When I said I had heard nothing more than Mr. Godfrey had reported, he stated that SOG Co. was continuing to 'protect' itself by buying from Union Oil. He offered the opinion that after 1958, Standard may not want to sell SOG Co. more than one-half of its requirements. When queried, he said that his company would buy around 3,000,000 gallons a month from Union. He said that Union Oil was pressing for a long-term deal, but that SOG Co. was planning to continue on a month-to-month arrangement until it was known what the future Standard Oil relationship would be.

Mr. Shepard was semi-apologetic about continuing the Union purchases, saying that if Mr. McClanahan had said or would say to Mr. Mosher, "Don't get concerned about the future; we'll work out something reasonable", Mr. Mosher, he felt sure, would want to purchase substantially all gasoline requirements from Standard. Shepard defended the original purchase from Union Oil with the statement that Standard had given no encouragement of an adjustment beyond .75¢.

Allen Shepard also raised the question: Do you think the Federal request for limits on crude oil imports into District 5 will influence Standard in wanting to take our crude oil?

In summary, it was evident that Shepard was speaking both for himself and his superiors in indicating he wanted to perpetuate the Standard Oil relationship on both crude oil and gasoline.

FRANK A. JORDON

cc: Mr. D. F. Godfrey

## Defendant's Exhibit No. 1709

Def. Exhibit	1709
Case	369-59
Rptr	Reed
Date	
Clerk	

## MEMORANDUM

Los Angeles, California  
November 7, 1957

SIGNAL OIL & GAS CO.

MR. H. G. VESPER  
San Francisco -

This morning I joined Messrs. March and Godfrey at breakfast. Following are a few of the comments and statements made by Mr. March:

1. SOG Co. is buying gasoline from Union at  $\frac{1}{2}$ ¢ to  $\frac{3}{4}$ ¢ better than SOG Co. can buy from Standard. And, of course, March added, "if we made a long term arrangement with Union it would be better yet."  
(All this would seem to contradict a statement Bud March made a week or 10 days ago - that he was buying at .98¢ better than the SOCo. price, including .75¢ maximum "Special Adjustment".)  
So - if the latest statements are correct the Union price is somewhere between 5.50¢ and 5.75¢ off our tank truck on Regular; and somewhere between 6.50¢ and 6.75¢ off our tank truck on Premium.
2. There are three companies, he said, that are willing to make a long-term better deal than Standard's present price. He elaborated: The offered contracts would be for 5 years, with margins off tank truck.  
The companies he refers to, we believe, are Union and Hurwalk - with the third possibly Hancock.
3. He is quite opposed to making a long-term contract with any of the three companies; and in so opposing the arrangements, he feels that he is probably losing money for SOG Co.
4. Western Hyway Oil Co. is now buying diesel fuel from Hancock in the San Francisco area at 9.15¢ - down from 9.5¢.
5. SOG Co. lost the Century Oil account to Union, as we know; and now, he says, Union has lost Century to Hancock at "God knows what price."
6. Lately Sam Mosher has stated flatly that Wilshire is "making millions on its refinery" - and has, in effect, been condemning March for voting against the refinery purchase. March says he is unable to convince Sam that Wilshire not only is not making money, but is actually losing money. Based on what he knows, for one thing, about the old Sunset leases and the volume those stations are doing, Wilshire, he says, can only be losing money in this poor market.
7. He reiterated that he is deeply concerned about the price of crude oil. That continues to be his largest concern and consideration.

PERRY A. JOHNSON

cc: Mr. D. F. Godfrey

## Defendant's Exhibit No. 1710

Exhibit	1710
Case	369-59
Date	
Rptr	
Clerk	

October 24, 1957

PHJ  
For your file  
11-5-57

Mr. S. B. Mosher  
Signal Oil & Gas Company  
811 West Seventh Street  
Los Angeles, California

Dear Sam:

Recently information has come to me that the Signal Oil & Gas Company has purchased a substantial quantity of gasoline from the Union Oil Company.

This is an unusual development when considering our longstanding relations. Over the years we have repeatedly supplied you with products far beyond our contract obligation. We have protected you in times of short supply and distressed circumstances to our disadvantage when it is considered such quantity could have been placed in other channels at materially greater financial benefit to us.

Under these circumstances, we feel that your arrangement with Union is inconsistent with not only the spirit of our contractual arrangement but also with our past performance in terms of quantities and price adjustments.

Kindest regards.

Sincerely,  
Original signed by  
E. J. McCLANAHAN

cc: Mr. T. S. Petersen  
Mr. H. G. Vasper  
Mr. D. F. Godfrey

*Gas. fulls*  
 73,546,000 -  
 Out at 3,000,000  
 Now - 3,000,000  
 Also - 70,546,000

RECEIVED  
 73,872,000  
 OCT 25 1957  
 73,872,000 for year

## Defendant's Exhibit No. 1711

Exhibit	1711
Case	364-54
Rptr	Reed
Date	Clerk

MEMORANDUM

Los Angeles, California  
October 3, 1957

SIGNAL OIL & GAS CO.  
Competitive Activities - UNION OIL CO.

MR. H. O. VESPER  
San Francisco -

Allen Shepard was saying today that a great deal of the Western Ryway gallonage out of Richmond during the month of October will be purchased direct from Union Oil Company. Originally, SOG Co. expected the Western Ryway liftings during the month to total 3,500,000 gallons from Standard. According to Shepard, most of this total will now come from Union, and very little from Standard. He expected that nearly all of the Robertson and Royal Oil Co. gallonage (totalling approx. 2,300,000) would continue to be lifted from our Richmond Refinery.

Shepard said that Union came to SOG Co. - and on the first offer gave a better price than Standard in giving SOG Co. including its "top subsidy". Shepard says that he had the feeling that if his people had done some bargaining the Union price might have been even better.

In addition to these purchases by SOG Co. from Union for resale to Western Ryway, Western Ryway purchases direct from Hancock out of Union's Oloma refinery on an exchange. Shepard resents this deal, which in times past Shepard and Zagloch have indicated is around 1¢ better than our price before "special adjustment". On this gallonage, SOG Co. receives no "wholesale profit", but profits only through its 60% ownership of Western Ryway. This gallonage, Shepard estimates, will run around 1,000,000 a month, average.

Thus, it is apparent that Union Oil will be supplying an increasing volume of SOG Co. gasoline. Shepard volunteered that he could readily serve the AGE stores (in Oakland and now Vallejo) with Union Gasoline if he saw any compelling reason for it.

Shepard says that Bud March is deeply concerned about the whole SOG Co. marketing organization and price structure because of the multitude of problems being created especially by the shrinking margins at the Royal Stations.

PERRY A. JOHNSON

cc: Mr. D. F. Godfrey  
Mr. O. E. Bagnens



## Defendant's Exhibit No. 1713

Exhibit	1713
Case	369-59
Refr	Ref
Date	Clerk

## Union Oil Company of California

San Francisco 20, Calif. - October 24, 1957

IN REPLY GIVE NO.

FMJ:743

Mr. A. D. Gray

At Los Angeles

Answering {Date-  
Letter {File-  
Subject

SIGNAL OIL & GAS

A. COCKHILL

In the event our surplus gas picture continues as does our current relationship with the above, we see tremendous possibilities should you desire to further expand gasoline sales in this area.

NOV 13 1957

You are currently in a position to supply 97/98 Octane Gas such as is being done at the Richmond Terminal. You also are now in a position, apparently, to authorize redyeing our Royal 76 for a Premium Gas, as illustrated by what you have accomplished at Eureka. -

If you were authorized to perform similarly at San Francisco, to that which you are doing at Eureka, then there is no major impediment to our approaching the King Regal business which, as you know, has six units or so, San Mateo North to San Francisco, and we would venture to say a potential of somewhere in excess of 500,000 gallons upward per month.

Of interest as to use of San Francisco Terminal (Rotrero), last week, the San Francisco Sales personnel moved out of there to the San Francisco Division office so that now this is purely and simply a Terminal.

South of San Francisco on down to and inclusive of San Jose are a number of other units, Star and Bar, owned by the individual members of Regal operating under a cooperative symbol and cooperative give-away. Here is another substantial volume using 97/98 as premium, and utilization of our Redwood City Marine Terminal would be a beautiful entree to this business. All this via Signal Oil and Gas.

The Star and Bar group, the King Regal group and the Regal group in Stockton and Sacramento, under Western Hiway and the Regal group in East Bay, Gilroy, Salinas, Monterey, etc., all trust Signal Oil and Gas. We know we have talked on this to you before and should you ever want a complete detailed picture of all of their operations, we can get this for you.

Signal Oil and Gas also offers you an entree to all Western Highway stove oil and Diesel business, should Hancock decide to leave us and go with Tidewater.

As we see it, expanding relations with Signal Oil and Gas give us a beautiful entree to this market, the only deterring factor being Standard of California.

Another thing in the Signal Oil and Gas/Standard background is crude oil picture, which runs from 50,000 to 65,000 barrels per day, Standard purchasing of Signal Oil and Gas. Standard with all their Mid-East crude may now consider a contract burden rather than an asset.

A. D. GRAY

OCT 28 1957

Refiner &amp; Jobber Sales

OCT 25 1957

A. D. Gray, Los Angeles

October 24, 1957

- 2 -

We heard through a confidential source that this contract is up for renewal next year. If you will recall, Wally Nickels told us some years ago each could back out 1/8th every six months.

A. COCKRELL

NOV 13 1957

*F. M. Jacobs*

F. M. JACOBS

FMJ:gg

## Defendant's Exhibit No. 1714

Exhibit	1714
Case	36-9-57
Rptr	Ref
Date	
Clerk	

November 14, 1957

Def #2  
11/7/63  
K. W. Wernick N.P.  
A. COCKRELL  
NOV 19 1957

Mr. A. D. Gray  
Union Oil Company of California  
617 West Seventh Street  
Los Angeles 17, California

Dear Mr. Gray:

Reference is made to your letter of September 25, 1957 offering to sell us gasoline for a sixty (60) day period ending November 30, 1957. We accepted the offer and are now taking deliveries as provided.

We herewith offer to purchase 2,000,000 gallons during the month of December 1957 under the same terms as provided in the above mentioned letter of agreement.

Please indicate your acceptance of this request on the attached copy of this letter and return to us for our records.

Very truly yours,

*asw*  
G. W. March

Accepted:

Union Oil Company of California

By A. D. GrayDate November 18, 1957

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1968

\_\_\_\_\_  
No. \_\_\_\_\_  
\_\_\_\_\_

CLYDE A. PERKINS,  
*Petitioner,*

VS.

STANDARD OIL COMPANY OF CALIFORNIA,  
*Respondent.*

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT**

\_\_\_\_\_  
Clyde A. Perkins petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this cause on November 2, 1967, and its judgment of July 11, 1968, denying rehearing.

**OPINIONS BELOW**

The opinion of the court of appeals is reported at 396 F. 2d 809 (App. 3a). The court's opinion denying rehearing is not yet officially reported (App. 2a). The court's opinion on motion for clarification also has not been reported (App. 1a).

## JURISDICTION

The jury verdict was rendered December 20, 1963. The judgment of the court of appeals was entered November 2, 1967 (App. 3a). A petition for rehearing was denied on July 11, 1968, and a judgment on motion for clarification also was entered that same day (App. 1a-2a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED

Petitioner Clyde A. Perkins—formerly one of the largest independent gasoline wholesalers and retailers in the Pacific Northwest—brought this action against Standard Oil Company of California charging that Standard violated Section 2 of the amended Clayton Act by selling gasoline at substantially lower prices to a competing wholesaler in the area and by not making available to petitioner payments, services and facilities granted to other Pacific Northwest retailers. Petitioner alleged that as a result of Standard's discriminations he was driven out of business. The jury returned a verdict in favor of petitioner, and it assessed actual damages of over \$330,000. The court of appeals set aside the entire verdict because some of petitioner's proof on the Section 2(a) aspects of his claim demonstrated (i) that the wholesaler obtaining the discriminatorily lower price, Signal Oil & Gas Company, resold the gasoline to one of its subsidiaries, Western Hyway Oil Company; (ii) that that subsidiary, in turn, resold to one of its subsidiaries, a retail marketing chain, Regal Stations Co.; and (iii) that Regal—to which the benefits of the discriminatorily lower price had been passed—precipitated a price war which adversely affected petitioner's overall wholesale and retail business. The court ruled, as a matter of law, that "Section 2(a) of the Act does not recognize a causal connection, essen-

tial to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard." The question presented is:

Whether Standard's discrimination in price between competing wholesalers—which substantially lessened competition in the Pacific Northwest wholesale and retail gasoline markets—is immune from attack under Section 2(a) of the Clayton Act solely because the most direct and immediate competitive injury was felt at the retail level and, in reaching that level, Standard's gasoline was resold by the favored wholesaler to a majority-owned subsidiary which, in turn, resold again to its majority-owned retail outlets.

#### STATUTE INVOLVED

Section 2 of the Clayton Act, as amended, 49 Stat. 1526, 15 U.S.C. § 13, provides in pertinent part as follows:

"Sec. (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them:"



## STATEMENT

### 1. Proceedings Below

On March 2, 1959, petitioner, Clyde A. Perkins, brought suit against respondent, Standard Oil Company of California (Standard), to recover treble damages for injuries resulting from Standard's price and price-related discriminations in the sale of gasoline and oil to petitioner in violation of Sections 2(a), (d) and (e) of the Clayton Act from March 2, 1955, through December 2, 1957. On December 20, 1963, after a protracted trial, the jury rendered a verdict for petitioner and assessed \$336,404.57 in damages against Standard. The court trebled the award and, after a separate hearing, allowed Perkins \$289,000 as attorneys fees for a total judgment against Standard of \$1,298,213.71.

Standard appealed to the United States Court of Appeals for the Ninth Circuit. In June 1965, oral argument was presented, and, on November 2, 1967—almost four years after the jury verdict—the court of appeals reversed the district court judgment and remanded the case for a new trial.

### 2. The Persons Involved

#### (a) *Petitioner*

Petitioner, Clyde A. Perkins, was one of the largest independent distributors of gasoline and oil in the Pacific Northwest States of Washington and Oregon (Ex. 5, 6, 21a). He started in the business in 1928 as the owner of a single service station in the State of Washington (Tr. 126-27). Over the years, Perkins acquired many more stations in Washington and Oregon (App. 4a). He also became a wholesaler in this area, having trucking equipment, operating several bulk storage plants and selling gasoline to other wholesalers,

retailers and commercial users (App. 4a; Ex. 99). From 1945 through December 1957 Perkins purchased substantially all of his gasoline from Standard, pursuant to a series of supply contracts (App. 4a; Tr. 1624-28).

In 1952 petitioner organized two corporations—Perkins Oil Company of Oregon and Perkins Oil Company of Washington—to which he transferred his gasoline and oil business and leased all of his bulk plants and most of his service stations (App. 4a; Tr. 154-74).<sup>1</sup> Although the corporations continued to carry on the wholesale business, they sublet most of the service stations (App. 4a-5a). The service stations not leased to the two corporations either were operated by Perkins<sup>2</sup> or leased to third parties (Tr. 173-74, 1579-81). There were approximately 60 retail stations leased or operated by petitioner, and all utilized petitioner's trade name, "Champion" (Tr. 2925).

On December 2, 1957, Perkins went out of business as a result of the damage inflicted by Standard's price and price-related discriminations; he leased the remnants of his enterprise to a major oil company, Union Oil Company of California (Ex. 1003).

*(b) Standard*

Standard Oil Company of California, a billion dollar corporation, was engaged in all aspects of the gasoline and oil industry; it refined crude oil, transported and stored gasoline, and sold gasoline to wholesalers, re-

<sup>1</sup> Petitioner brought this case on his own behalf and on behalf of the above two corporations, which had assigned their claims against Standard to him (App. 9a).

<sup>2</sup> Hereafter "Perkins" and "petitioner" include Clyde A. Perkins individually and Perkins Oil Company of Oregon and Perkins Oil Company of Washington.

tailers, commercial users and directly to the motoring public (Tr. 4914, 5630). During the period involved here, Standard had the largest share of the Pacific Northwest gasoline market (nearly 30 percent) and was the price leader in the area (Tr. 3289, 5630). Standard's principal delivery terminals in the Pacific Northwest were located at Point Wells near Seattle and Willbridge in Portland (Ex. 280B-1; 1524). In addition to Perkins, Standard sold gasoline to its Chevron and Standard dealers, who were retailers, and to wholesalers such as Signal Oil & Gas Company (Tr. 451-67, 473-81). Over the years, Perkins purchased more than 8 percent of Standard's total gallonage in the Pacific Northwest while operating only in approximately a third of this area (Ex. 2, 5, 6; Tr. 1626).

*(c) Signal*

Signal Oil and Gas Company (Signal) was a large, completely integrated producer and distributor of gasoline throughout the Western United States (Tr. 382-401, 763, 5447). Signal, both a supplier to and customer of Standard since the early 1930's,<sup>a</sup> began pur-

---

<sup>a</sup> Signal's relations with Standard date back to January 1932 when the companies entered into a contract under which Standard agreed to purchase crude oil and natural gasoline from Signal and, in return, to supply Signal with its refined motor gasoline requirements. This agreement was renewed for a ten-year period in 1938. Because Signal's supply of crude oil was so substantial (approximately 45,000 barrels a day in 1946) and essential to Standard's ability to meet its commitments, Signal and Standard began to renegotiate the contract in 1946.

After reaching an impasse over the price of the motor gasoline to be sold to Signal, it was agreed that Standard would purchase Signal's marketing business and facilities, including bulk plants, commission distributors, motor equipment, retail stations and trademarks. Standard reluctantly consented, also, to permit Signal

chasing from Standard at its Point Wells terminal in 1955 and at its Willbridge terminal in 1956 (Tr. 385, 5442, 5455-56). Within two years Signal had become one of Standard's largest purchasers in the Pacific Northwest (Ex. 23H). Although Signal operated as a wholesaler in the Pacific Northwest, it did not directly own any trucks or storage facilities there (Tr. 536, 4738). Signal transferred much of the gasoline it purchased from Standard to Western Hyway Oil Company (Western Hyway), and it also sold to independent jobbers (Tr. 399, 1055).

*(d) Western Hyway and Regal*

Western Hyway was incorporated in 1950 with Signal owning 60 percent of the stock (Tr. 399, 400, 4739). It was a trucking company without storage facilities in the Northwest (Tr. 536, 4738). The company lifted Signal's gasoline at Standard's terminals and delivered it to retailers (Tr. 416-17). Substantially all the gasoline handled by Western Hyway came from Signal (Tr. 415), and Signal treated its transfers of gasoline to Western Hyway as sales (app. 8a). Western Hyway's main customer in the Portland area was Regal Stations Co. (Regal) (Tr. 416).

Regal operated three retail outlets in the Portland area (Tr. 527-28); these outlets were opened in October 1956, December 1956, and January 1957 (Tr. 527-28). Regal competed with stations supplied and owned by Perkins (Tr. 787-793, 886-907, 644-745). Regal was in-

---

to re-enter the gasoline marketing business and to supply Signal's gasoline needs. This agreement was predicated on the condition that Signal increase the amount of crude oil and natural gasoline then being delivered to Standard. Throughout the period in question in this case Standard was both a purchaser from and seller to Signal. (Tr. 5444-60.)



incorporated in Oregon in 1956, and, at the time of incorporation, Western Hyway owned 55 percent of its stock (Tr. 4740). In October 1957, Western Hyway acquired 100 percent ownership of Regal (*ibid*).

*(e) The Branded Dealers*

Standard also sold gasoline directly to the independent operators of its Chevron and Signal\* stations (hereafter referred to as Branded Dealers). These Branded Dealers operated numerous retail service stations in the Pacific Northwest and competed with petitioner's retail stations and the retail stations supplied by him (Tr. 578-80, 590, 1230).

**3. The Discriminations in Their Commercial Context**

*(a)* Standard, the largest supplier of gasoline in the Pacific Northwest, sold gasoline of like grade and quality to Perkins, Signal, and its Branded Dealers from the same bulk storage facilities at Point Wells and Willbridge (App. 6a; Tr. 1275, 1280, 1346). It is uncontested that Standard sold at lower prices to Signal than to Perkins\* (Tr. 5469), and there was substantial evidence from which the jury could have found that

---

\* The Signal stations were operated under the authorization of the Signal Oil Company, a division of Standard (Tr. 5456-57). Signal Oil Company was created out of the retail distribution system of Signal Oil & Gas purchased by Standard prior to this litigation (see fn. 3, pp. 6-7, *supra*), and during the time covered by this litigation it was not connected with Signal Oil & Gas Company.

\* For over two years after this case had been filed, Standard denied any price discrimination in favor of Signal. However, on the day prior to the deposition of Signal's president, Standard admitted granting Signal rebates exceeding \$1,000,000 which it stated had previously been overlooked. A substantial portion of those rebates was directly allocable to gasoline purchased by Signal in the Pacific Northwest (Ex. 23C).

Standard also discriminated in price in favor of its Branded Dealers and against Perkins (App. 11a; Tr. 452-59, 474-75, 516, 557-58, 629-30, 1254, 5556). There also was substantial uncontroverted evidence that the Branded Dealers and the retailers purchasing Standard gasoline through Signal had received from Standard numerous other benefits which had not been made available to Perkins' retail stations or the retail stations supplied by him (Ex. 2, 106; Tr. 452-59, 474-75, 516, 557-58, 629-30, 1254, 5556). The impact of these price and price related discriminations upon Perkins' previously successful and expanding business was catastrophic: He was driven from the market within two years after Standard began supplying Signal in the Pacific Northwest (Ex. 93B, 93C, 1003; Tr. 3335, 3359-60, 3365).

(b) Standard began supplying Signal from its Point Wells terminal near Seattle in 1955, and soon thereafter Signal entered the Centralia market (in Washington) as a wholesaler (Tr. 385).<sup>a</sup> Following Signal's entry into the Centralia market, a severe price war began, initiated by retail stations to which Signal had passed the benefits of Standard's price discrimination in its favor (Tr. 1282, 1313-16, 1341). In most profitable retail stations gasoline prices to the public are generally 6 cents per gallon over the price paid by

<sup>a</sup> One of Signal's customers, a trucker, began making direct sales to two independent retailers (in the Centralia market) which had been regular customers of Perkins (Tr. 252, 1057, 1350, 2451, 2681, 3081-84, 3390-95, 3455; 5x. 282C-G). In an effort to retain one of the customers, petitioner reduced his margin by more than 90 percent but was still unable to beat the trucker's price (Tr. 2648). At trial, it was shown that because of Signal's discriminatorily favorable price from Standard, Signal was able to sell to the trucker at a lower price than petitioner had paid in purchasing gasoline direct from Standard (Tr. 2696-97).

the dealer (the tank truck or wholesale price) (Tr. 2855-57). During the depths of the price war in the Centralia area, however, the retail price went as low as 4 cents below the tank truck or wholesale price (Ex. 81J, K, S, T, U; 1453X, Y, AA, BB). During this price war Standard heavily subsidized its Branded Dealers in accordance with a sliding scale down to a fixed irreducible margin of  $3\frac{1}{2}\text{¢}$  per gallon (later raised to  $4\frac{1}{2}\text{¢}$ ), after which Standard absorbed any additional decrease in price (*ibid*; Ex. 1453A). Standard provided no comparable assistance to Perkins or the retailers supplied by him (Tr. 2925).

As a result, during this price war, the retail Branded Dealers often purchased gasoline from Standard at lower net prices than Perkins, who operated primarily as a wholesaler (Ex. 81J, K, S, T, U; 1453X, Y, AA, BB). Furthermore, during this period numerous other advantages extended to the Branded Dealers were not made available to the retail stations operated and supplied by petitioner. These advantages included use of Standard's credit card (worth  $1\frac{3}{4}\text{¢}$  per gallon); rest room and maintenance allowances (worth  $\frac{1}{4}\text{¢}$  per gallon), advertising allowances, free delivery services, free station painting, and the right to indicate they were selling major brand gasoline (worth  $2\text{¢}$  per gallon) (Tr. 478, 1124, 1439, 2948, 4593, 5242).

(c) In mid 1956 Standard also began supplying Signal from its Willbridge terminal in Portland (Tr. 385). Three Regal stations were opened in the Portland area shortly thereafter (Tr. 527-28). The Regal stations were supplied all their gasoline requirements by Western Hyway, which obtained the gasoline from Signal (Tr. 378, 406, 412-13). Soon after they opened the Regal stations reduced the price for gasoline below

the generally prevailing prices in the Portland area (Tr. 492-500, 507-13, 517-22). They also advertised the acceptance of major oil company credit cards and that their gasoline was a major brand (Tr. 460-61, 1443).

Regal's entry into the market broke the existing price structure and precipitated a major price war which greatly upset the whole market (Tr. 492-500, 510-11, 518-22, 605-12, 644-745, 787-93, 886-985). Petitioner introduced substantial evidence to prove that the price and price-related discriminations which Signal received from Standard and passed on to its subsidiary Western Hyway and then to Regal, Western Hyway's subsidiary, enabled Regal to break the market (*ibid.*).

The effects of Regal's entry into the market were far-reaching, going beyond the diversion of business from retail stations supplied by petitioner. There was substantial evidence that the price war precipitated by Regal spread throughout much of the Pacific Northwest (Tr. 902-08). Standard subsidized Branded Dealers located in areas many miles distant from Portland, in order to enable them to respond to the sharp price downturn caused by Regal (Tr. 556-58, 629-33). Again, of course, no comparable price or price-related assistance was made available to Perkins (Tr. 997-98).

(d) All aspects of petitioner's business were drastically affected by Standard's price and price-related discriminations in favor of Signal and its Branded Dealers in the Pacific Northwest. Prior to 1955 petitioner had enjoyed growth and financial success in his business; after Standard began discriminating in favor of Signal and its Branded Dealers, Perkins' gasoline volume and profits decreased dramatically (Ex. 93B, 93D). No less dramatic was the decline in petitioner's



fuel oil sales and income from his leased stations (Ex. 82M, 93). For example, petitioner sold approximately 4.4 million gallons of fuel oil in 1955, 3.6 million gallons in 1956 and only 2.4 million gallons in 1957 (Ex. 93C).

These declines were caused by Standard's price discriminations in favor of Signal and its Branded Dealers which occasioned many customers to cease purchasing gasoline from customers supplied by petitioner (Tr. 644-745). A number of witnesses testified that when a customer was lost for gasoline purchases, he almost invariably was lost as a fuel oil customer shortly thereafter (Tr. 3037-79, 3538, 3572).

Despite the price and price-related discriminations in favor of Signal and the Branded Dealers, for over two years petitioner struggled to continue as a viable independent distributor of gasoline. By December 1957, however, Standard's predatory discriminations had taken their toll. Perkins was forced to lease to a major oil company the remnants of a business it had taken 30 years to build—and one of the largest independent distributors of gasoline was effectively eliminated from the Pacific Northwest gasoline market (Ex. 1003).

#### 4. The Judgments Below

After hearing this evidence and properly being instructed by the trial judge, the jury returned a verdict in favor of petitioner, assessing actual damages in the amount of \$336,404.57. Pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, the trial judge trebled the jury award, and, after a separate hearing, awarded attorneys fees in the amount of \$289,000 for a total judgment against Standard of \$1,298,213.71 (App. 4a).

The court of appeals reversed and remanded the case for a new trial. The court apparently agreed that Standard's price and price-related discriminations in favor of its Branded Dealers violated Section 2 of the Clayton Act and that petitioner could properly recover damages caused by such discriminations (App. 11a). The court also acknowledged that the evidence proved that the impact of Regal's price-cutting policy—supported by Standard's discriminations in favor of Signal—"adversely affected both the wholesale and retail business carried on by Perkins" (App. 8a). The entire jury verdict was set aside, however, because in the view of the Ninth Circuit, Section 2(a) of the Clayton Act, as a matter of law, "does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard" (App. 15a).<sup>7</sup>

#### REASONS FOR GRANTING THE WRIT

This case presents a novel question of major significance in the interpretation of Section 2 of the amended Clayton Act, 15 U.S.C. § 13(a). The jury awarded petitioner Clyde A. Perkins—formerly one of the largest independent gasoline wholesalers and re-

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<sup>7</sup> After reversing the judgment on the grounds discussed above, the court observed that "[i]nasmuch as the case must be returned to the District Court and tried anew, we believe it appropriate to briefly comment upon several of Standard's remaining points" (App. 8a). In the following part of its opinion the court indicated that the trial judge had erred in some rulings on the computation of damages. If this Court grants the petition for a writ of certiorari we propose to argue that the court of appeals erred insofar as those rulings were adverse to Perkins and that this Court should therefore reinstate the entire verdict, unless the Court limits the grant of certiorari to the question discussed herein.

tailers in the Pacific Northwest—substantial damages for injury to his business caused by Standard's price and price-related discriminations in favor of a competing wholesaler, Signal Oil & Gas Company, and others. The Ninth Circuit set aside the entire verdict, holding as a matter of law that Standard's discriminatory pricing policy involving Signal, Western Hyway and Regal was not actionable under Section 2(a).

In reaching that result, the court made no mention of the Act's purpose to prevent large buyers from gaining discriminatory price advantages over their smaller rivals. Nor did the court assign any weight to the fact that Standard's price discrimination had caused a substantial lessening of competition in the Pacific Northwest wholesale and retail gasoline markets, driving out of business one of the area's largest independents. Rather, impressed with the form of the transaction, the court ruled that the verdict in favor of Perkins must be set aside solely because the favored purchaser (Signal) did not resell the gasoline directly to its retail customers (Regal), but instead resold to its subsidiary (Western Hyway) which, in turn, resold to its subsidiary, the Regal retail outlets. The court reasoned that "Regal was not a customer of a customer within the purview of Section 2(a) of the Act" (App. 7a, fn. omitted), and that:

"Section 2(a) of the Act does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard." [App. 15a.]

The decision of the Ninth Circuit, if permitted to stand, will set an arbitrary and economically unreal-

istic limitation on the power of Section 2(a) to prevent price discriminations which tend "substantially to lessen competition . . . in any line of commerce." Moreover, by basing that limitation exclusively on the number of persons in the distributive chain established by the favored purchaser, the decision will enable the powerful buyers to insure that suppliers which grant them favorable price concessions will be able to avoid the sanctions of the Clayton Act. The ease with which the court's ruling could be utilized to subvert the purposes of Section 2(a) is well illustrated by the facts of this case where Signal's customer, Western Hyway, was a majority-owned subsidiary of the favored purchaser, and the Regal retail outlets were a majority-owned subsidiary of Western Hyway.<sup>8</sup>

It is critically important that large buyers (and sellers) be denied this easy means of destroying the competition. Section 2 of the Clayton Act is designed to protect, particularly in the petroleum industry where, in the words of Chairman Dixon of the Federal Trade Commission—

"the 'independent'—including the independent refiner, the independent jobber and the independent retailer—has, as the saying goes, one foot in the grave and the other on a banana peel." [quoted in Wilson, *Recent Developments Affecting Independent Businessmen in the Oil Industry*, 9 Antit. Bull. 559, 562 (1964).]

We demonstrate below that the decision of the court of appeals is incorrect on several grounds. First—accepting *arguendo* the Ninth Circuit's conclusion

<sup>8</sup> Operation through subsidiaries is common in the petroleum industry (Tr. 3169, 4780, 4954). Standard presently has over 100; Signal (now called Signal Industries, Inc.) has over 45. Moody's Industrial Manual, pp. 2126-27, 2496-97 (July, 1968).



that this case involves so-called "fourth line" injury not cognizable under the Robinson-Patman amendments to Section 2 of the Clayton Act—it is clear that under the original Section 2 standard, which was not altered by those amendments, the jury could properly have found that the effect of Standard's price discrimination was "substantially to lessen competition . . . in any line of commerce," i.e., the wholesale and retail marketing of gasoline in the Pacific Northwest (pp. 17-24, *infra*). Secondly, the court erred in concluding that this case involved fourth line injury. Since Perkins and Signal were competing wholesalers, the effect of the price discrimination against Perkins could properly have been found by the jury to "injure, destroy, or prevent competition with any person [Signal] who . . . knowingly receives the benefit of such discrimination"—a traditional example of second line injury (pp. 24-25, *infra*).<sup>9</sup>

(1) Any price discrimination covered by Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act,<sup>10</sup> is prohibited if its effect may be—

"[a] substantially to lessen competition or to tend to create a monopoly in any line of commerce

or

"[b] to injure, destroy, or prevent competition with any person

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<sup>9</sup> In every realistic sense Perkins and Signal also were competitors on the retail level, because Signal, through its ownership of Western Hyway, had the power to control Western's subsidiary, Regal (App. 8a, fn. 6). See pp. 25-27, *infra*.

<sup>10</sup> There are no questions in this case that both Perkins and Signal were "purchasers" from Standard; that they purchased gasoline "of like grade and quality"; and that the pertinent transactions occurred "in-commerce" (Tr. 6338).

- (1) who either grants or
- (2) knowingly receives the benefit of such discrimination, or
- (3) with customers of either of them."

The statute thus contains two distinct and independent tests of illegality. The first, [a] above, the original Section 2 standard, focuses on the overall "line of commerce" in which the competitive injury is felt. The second, [b] above, the Robinson-Patman amendments, focuses on the specific competitors injured by the price discrimination. See generally, Rowe, *Price Discrimination Under the Robinson-Patman Act* 114-23 (1962).

The Ninth Circuit in the decision below completely ignored the original Clayton Act standard;<sup>11</sup> it discussed only the language of the Robinson-Patman amendments. The district court, however, had correctly charged the jury that it could return a verdict against Standard if it found that the effect of Standard's price discrimination "may have been to substantially lessen competition . . . in any line of commerce . . ." (e.g., Tr. 6354-55.) The court of appeals erred in failing to uphold the jury verdict on that ground.

While this Court has never decided the precise issue presented here, its ruling in *George Van Camp & Sons Co. v. American Can Co.*, 278 U.S. 245 (1929), decided prior to the Robinson-Patman amendments, strongly supports the jury verdict against Standard. In *Van Camp*, a purchaser from the defendant sued to enjoin price discriminations against it in violation of the

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<sup>11</sup> Indeed, Section 2(a) as set forth in the court's opinion omitted entirely the "in any line of commerce" language (see App. 6a, fn. 3).

original Section 2 of the Clayton Act. The defendant argued that its price discriminations could not be challenged by a purchaser because the statutory words "in any line of commerce" "must be confined to the particular line of commerce in which the discriminator is engaged, and that they do not include a different line of commerce in which purchasers from the discriminator are engaged in competition with one another." 278 U.S., at 253.

This Court flatly rejected that argument, ruling that the action came—

"within the terms of the statute, unless the words 'in any line of commerce' are to be given a narrower meaning than a literal reading of them conveys. The phrase is comprehensive, and means that if the forbidden effect or tendency is produced in *one* out of *all* the various lines of commerce, the words 'in *any* line of commerce' literally are satisfied." [*Ibid.*, emphasis in original.]

Continuing, the Court observed that adoption of defendant's argument would lead to a result at variance with "[t]he fundamental policy of the legislation"—

"[t]hat, in respect of persons engaged in the same line of interstate commerce, competition is desirable and that whatever substantially lessens it or tends to create a monopoly in such line of commerce is an evil. Offense against this policy, by a discrimination in prices exacted by the seller from different purchasers of similar goods, is no less clear when it produces the evil in respect of the line of commerce in which they are engaged than when it produces the evil in respect of the line of commerce in which the seller is engaged. In either case, a restraint is put upon 'the freedom of competition in the channels of interstate trade

which it has been the purpose of all the antitrust acts to maintain.' " [*Id.*, at 254, emphasis added.]

The same reasoning necessitates a reversal of the court of appeals' decision below. That decision would limit unduly the coverage of Section 2(a), excluding from its reach price discriminations whose demonstrably anticompetitive effects do not occur above a predetermined point in the favored purchaser's chain of distribution. Nothing in the original Section 2(a) language supports such a restrictive interpretation. On the contrary, "[i]n using the term 'line of commerce' Congress evidently was referring to *lines of goods* rather than levels of competition." Austin, *Price Discrimination and Related Problems Under the Robinson-Patman Act* (2d Rev. Ed. 1959) 7 (emphasis added). See also, Edwards, *The Price Discrimination Law* 7 (1959) ("Subsequent to this decision [*Van Camp*] the statute applied to all discriminations that had the prohibited anticompetitive effect, no matter where that effect became apparent.").

Effectuation of the Act's broad remedial purpose requires, in this case no less than in *Van Camp*, that the "in any line of commerce" language be defined to prohibit a lessening of competition in any commercially significant product and geographic market—regardless of whether the favored purchaser is able to structure its distribution system so that the most direct and immediate competitive injury occurs two persons below it. While such evidence may be pertinent in determining whether, *as a matter of fact*, the competitive injury was proximately caused by the price discrimination, it should not be permitted to exonerate from liability, *as a matter of law*, a supplier




whose price discrimination has been proved to cause the requisite competitive injury.<sup>12</sup>

On the facts of this case there can be no question that the jury properly could have concluded that the retailing and wholesaling of gasoline in the Pacific Northwest was a commercially significant line of commerce in which it was appropriate to test the anticompetitive impact of Standard's price discrimination. And the jury likewise could properly have concluded that competition was substantially lessened when one of the area's largest independents was driven out of business and supplanted by one of the majors. This is particularly true since the price discriminations which caused the independent's demise were granted by Standard—the most powerful supplier in the Pacific Northwest, furnishing nearly 30 percent of the area's gasoline gallonage (Tr. 3289); the price discriminations were continued for over 2½ years until Perkins went out of business; and they were granted in circumstances where Standard had every reason to know that Signal would pass along to Regal

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<sup>12</sup> Our interpretation of the "in any line of commerce" language not only is in accord with the objectives of Section 2 of the Clayton Act as stated in *Van Camp, supra*; it also is consistent with the uniform judicial interpretation of the same language in Section 3 and Section 7 of the Act. *Standard Oil of California and Standard Stations, Inc. v. United States*, 337 U.S. 293 (1949); *United States v. duPont & Co.*, 353 U.S. 586, 594 fn. 13 (1957). Indeed, in the landmark decision in the *duPont-General Motors* case, this Court expressly relied upon *Van Camp* as support for its ruling that appraisal of the pertinent line of commerce in a merger action cannot be limited by a *priori* rules of inclusion and exclusion.



those discriminatory price advantages in order to injure Perkins.<sup>13</sup>

The 1936 Robinson-Patman amendments to Section 2 of the Clayton Act do not provide a rationale for the Ninth Circuit's decision. On the contrary, they lend strong support to our argument. The amendments provide that any price discrimination is unlawful if it injures, destroys or prevents competition with the discriminating supplier, the favored purchaser or the customers of either (see [b], p. 17, *supra*).

The amendments "were motivated principally by congressional concern over the impact upon secondary-line competition of the burgeoning of mammoth purchasers, notably chain stores. However, the legislative history of those amendment *leaves no doubt that Congress was intent upon strengthening the Clayton Act provisions, not weakening them. . . .*" Cf. *FTC v. Anheuser-Busch, Inc.*, 363 U.S. 536, 543-44 (1960) (fn. omitted) (emphasis added). Congress sought to achieve this strengthening by lowering the standard of proof of a violation. As the Report of the Senate Judiciary Committee emphasized, the original Section 2 of the Clayton Act—

"has in practice been too restrictive, in requiring a showing of general injury to competitive

<sup>13</sup> For example, the record reflects a conversation between two Standard officials in which the following observation was made (Tr. 353):

"'You have the authority to do it and I want you to stop Regal from going to the Northwest because, if they do, they will wreck that market because they have got a better price than either Clyde [Perkins] or my other jobbers have up there, and if they come up there, they will do the same thing they have done other places. They will wreck that market'."

The Standard official to whom that observation was directed was the man responsible for supplying gasoline to Signal.

conditions in the line of commerce concerned; whereas the more immediately important concern is in injury to the competitor victimized by the discrimination. Only through such injuries, in fact, can the larger general injury result, and to catch the weed in the seed will keep it from coming to flower."<sup>14</sup>

Thus, under the Robinson-Patman amendments a violation may be premised on proof of substantial injury to specific competitors of the favored purchaser or its customers. Where such second or third line injury is present, no substantial lessening of competition in an entire "line of commerce" need be shown. See, e.g., *FTC v. Morton Salt Co.*, 334 U.S. 37, 50 (1948). For

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<sup>14</sup> S. Rep. No. 1502, 74th Cong., 2d Sess., p. 4 (1936). That sentiment was echoed in H. Rep. No. 2287, 74th Cong., 2d Sess., p. 8 (1936), and on the floor by Representative Utterback (80 Cong. Rec. 9417 (1936) (emphasis added):

"The discriminations prohibited by this bill are those whose effect may be:

1. Substantially to lessen competition in any line of commerce; or,
2. To tend to create a monopoly in any line of commerce; or,
3. To injure, destroy, or prevent competition:
  - (a) With any person who either grants or knowingly receives the benefit of such discrimination; or,
  - (b) With customers of either of them (i.e., the grantor or grantee).

Effects nos. 1 and 2 above correspond to those required to be shown under the old section 2 of the Clayton Act. Generally speaking, they require a showing of effect upon *competitive conditions generally in the line of commerce and market territory concerned*, as distinguished from the effect of the discrimination upon *immediate competition with the grantor or grantee.*"

this reason, most Section 2 litigation has since been brought under the Robinson-Patman amendments.<sup>15</sup>

Nothing in the language of those amendments, their legislative history and subsequent enforcement policy, however, justifies the Ninth Circuit's holding that petitioner's proof, which satisfied the stricter standard of the original Section 2, provides no basis for a cause of action. Congress manifestly did not intend its loophole closing amendments to convolute the entire statutory scheme, in effect reading out of the Act the original Section 2 provision. See fn. 14, p. 22, *supra*.

While Congress apparently did not consider it necessary to apply the amendments' easier standard of proof to competitive injury at the so-called fourth line, it surely gave no indication that it intended thereby to preclude all causes of action premised on such injury. Indeed, by leaving untouched the original Section 2 language, Congress negated any such possibility. The amendments specifically cover primary line, secondary line and tertiary line injury. It is essential therefore that injury not occurring at those levels be cognizable under the original prohibition of price discriminations which may tend substantially to lessen competition "in any line of commerce," or else that language will be mere surplusage, having exactly the same scope as the

<sup>15</sup> "There is . . . no incentive for the Commission to distinguish sharply between the two kinds of injury nor for the respondents to insist on such a distinction. Whatever type of injury can be most conveniently proved is likely to become the basis of the Commission's case. Since a showing of injury to a class of competitors is usually easier than a showing of injury to competition in the market, efficiency and economy in law enforcement suggest emphasis on the narrow concept rather than the broad one." Edwards, *The Price Discrimination Law* 540 (1959).



Robinson-Patman amendments but imposing a greater burden of proof. See, e.g., *Ex Parte Public Nat'l Bank*, 278 U.S. 101, 104 (1928).

(2) Independent of the Ninth Circuit's error in holding that Section 2 of the Clayton Act has no applicability in fourth line cases, discussed above, the court fundamentally misconceived the nature of this case in ruling that it involved fourth line injury. The district court submitted to the jury the question whether Standard's favored purchaser (Signal) and its disfavored purchaser (Perkins) were competitors (Tr. 6341-42, 6347). The jury could properly have found that they were competitors because each purchased gasoline directly from Standard; each wholesaled its gasoline in the Pacific Northwest; and the retailers served by each actively competed for the patronage of the motoring public.<sup>16</sup> *Ingram v. Phillips Petroleum Co.*, 259 F. Supp. 176, 182 (D.N.M. 1966); *Guyott Co. v. Texaco, Inc.*, 261 F. Supp. 942 (D. Conn. 1966); *McCormack v. Theo. Hamm Brewing Co.*, 1968 Trade Cases ¶ 72,404, p. 85,249 (D. Minn. 1968); see *FTC v. Morton Salt Co.*, 334 U.S. 37, 55 (1948); *Krug v. International Tel. & Tel. Co.*, 142 F. Supp. 230 (D.N.J. 1956). The case therefore provides a traditional example of a second line injury situation, in which the disfavored purchaser is injured in competition with the favored purchaser. For "[t]he retail stations . . . are the instrumentalities through which competition for this ultimate market is waged." *Standard Oil Co. and Standard Stations, Inc. v. United States*, 337 U.S. 293, 323 (1949) (Mr. Justice Jackson dissenting).

<sup>16</sup> See the Statement pp. 9-11, *supra*.

In these circumstances, the evidence of the competitive injury caused by Regal was certainly relevant in determining the extent to which Perkins was damaged by Standard's unlawful price discriminations. For example, the less gasoline the retailers served by Perkins were able to sell, the less gasoline they purchased from Perkins (Tr. 1224-27, 3030-74), and this diminution of Perkins' sales volume constituted "damages resulting necessarily and directly and immediately from" Standard's unlawful conduct. See *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931).

In this case the causation question was properly submitted to the jury under Section 4 of the Clayton Act, 15 U.S.C. § 15 (Tr. 6346-50), and the jury resolved it against Standard. That verdict should have been permitted to stand. The damage provision of the Clayton Act is not concerned with functional levels or lines of competition. "[T]he controlling rule today in seeking damages for loss of profits in antitrust cases is that the plaintiff is required to establish with reasonable probability the existence of some causal connection between defendant's wrongful act and some loss of anticipated revenue. Once that has been accomplished, the jury will be permitted to 'make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly.' " *Flintkote Co. v. Lysfjord*, 246 F.2d 368, 392 (9th Cir.), cert. denied, 355 U.S. 835 (1957).

(3) It is important, finally, to emphasize that Signal possessed the power to control the activities of both purchasers below it in its chain of distribution. Signal was a majority stockholder of its subsidiary, Western

Hyway, and through Western it "was in a position to exercise control over Regal," as the court of appeals acknowledged (App. 8a, fn. 6). The fact that Signal, Western and Regal were not truly independent entities underscores the importance of the arguments we have made in Points (1) and (2) above. If the Ninth Circuit's ruling is permitted to stand, Section 2(a) could be violated by large buyers and sellers almost at will, merely through the utilization of subsidiary corporations having separate identities but fully subject to the control of their parents.

Therefore, if the Ninth Circuit decision is not reversed on the grounds urged in Points (1) and (2), it would be important for this Court to reverse the court of appeals' ruling that the actions of Regal were not attributable to Signal because Signal did not exercise its power to control Regal. A reversal on that ground, while not fully obviating the destructive consequences of the Ninth Circuit's decision, would at least make it more difficult for large buyers and sellers to utilize price discriminations to competitively injure persons like Perkins without running afoul of Section 2(a).

That Signal may not have chosen to exercise to the hilt its power fully to control Western Hyway and Regal is not significant in deciding the issue presented here,<sup>17</sup> although it may be significant in other situa-

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<sup>17</sup> It is significant that Signal (as well as Standard) ignored the subsidiaries' separate corporate identities when it was useful to do so, treating, for example, an offer by Union Oil Company to sell gasoline at a reduced price to Western Hyway as an offer directly to Signal (Ex. 1707).

tions. *National Lead Co. v. FTC*, 227 F. 2d 825 (7th Cir. 1955), reversed on other grounds, 352 U.S. 419 (1957).<sup>18</sup> The price discrimination was granted by Standard to Signal. Whether Regal did or did not have the pricing flexibility to injure retailers served by Perkins depended solely upon whether Signal itself decided to transmit to Regal the benefits of Standard's price advantage. Standard was well aware of Signal's capabilities and likely action in this regard (see fn. 13, p. 21, *supra*). Therefore, since Signal decided to do all that was necessary to drive Perkins out of business, Standard should not be able to escape the consequences of its price discriminations merely because Signal did not go farther and exercise in other respects its power to control the operations of Regal.

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<sup>18</sup> In *National Lead* the court, after finding a violation of § 2(a) by the subsidiary-seller, refused to hold the parent responsible for the violation absent a showing of an actual exercise of control by the parent over the acts of the subsidiary. Here, the issue is whether a favored buyer can immunize price discriminations from the proscriptions of § 2 of the Clayton Act through the utilization of subsidiaries which it has the power to control. To the extent that the requirement of an actual exercise of control as set forth in *National Lead* should have any applicability, it must be limited to the assigning of responsibility for violations of the law and should not be employed in determining whether a violation of § 2 of the Clayton Act has, in fact, occurred.



**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 1968

APPENDIX

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

VS.

CLYDE A. PERKINS, *Appellee.*

[July 11, 1968]

ON MOTION FOR CLARIFICATION

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

In response to Perkins' Motion for Clarification, we make the following amendments to and of the opinion: Immediately preceding the final paragraph is inserted a new paragraph reading:

"In view of the outcome of this appeal, all questions concerning attorneys' fees shall await final disposition of the litigation in the district court or this court."

In addition, the final paragraph is amended to read:

"The judgment is reversed and the cause remanded for a new trial on both liability and damages (including the submission of additional or different evidence pertaining thereto), consistent with the views expressed in this opinion. On the matter of liability, however, since Standard has not questioned the trial court's ruling that Perkins and the Perkins corporations were purchasers within the meaning of the Clayton Act, the contention that Perkins was a consignee for commercial purposes and not a purchaser, will not be available to Standard on retrial."

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

vs.

CLYDE A. PERKINS, *Appellee.*

[July 11, 1968]

## ON PETITION FOR REHEARING

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

Perkins' petition for rehearing is denied. Essentially it is nothing more than a repetition of arguments concerning assignments, which we are satisfied were all adequately considered and correctly passed upon by our written opinion. However, one particular point is not unworthy of brief current comment.

Because Perkins or the Perkins corporations operated or were interested in a few retail service stations, in addition to the wholesale distribution which comprised by far the greater part of their business, we believed it useful to point out that on retrial any recovery on their 2(d) and 2(e) claims for allowances and services proportional to any Standard made to its branded dealers on the retail level should not reflect Perkins' wholesale distribution.

The validity of our cautionary observation that under section 2(d) and its companion 2(e) a seller's obligation for such matters is limited to customers who compete with each other on the same level of distribution is in no wise weakened by the Supreme Court's recent reversal of *F.T.C. v. Fred Meyer, Inc.*, 359 F.2d 351 (9th Cir. 1966) reversed 390 S. Ct. 341 (1968), the decision upon which we relied.

To the contrary, its validity is finally confirmed and settled beyond dispute, for in *Meyer* the Court opined:

"We cannot assume without a clear indication from Congress that § 2(d) was intended to compel the supplier to pay the allowances to a reseller further up the distributive chain who might or might not pass them on to the level where the impact would be felt directly. We conclude that the most reasonable construction of § 2(d) is one which places on the supplier the responsibility for making promotional allowances available to those resellers who compete directly with the favored buyer." (p. 357).

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

vs.

CLYDE A. PERKINS, *Appellee.*

[November 2, 1967]

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.  
KOELSCH, Circuit Judge.

Clyde A. Perkins brought this suit against the Standard Oil Company of California to recover treble damages for injuries allegedly resulting from Standard's price and price-related discriminations in the sale of gasoline and oil in violation of Section 2(a), (d) and (e) of the Clayton Act, as amended by the Robinson-Patman Act.



At the conclusion of a protracted trial, the jury rendered its verdict for Perkins and against Standard, assessing damages in the total sum of \$336,404.57.<sup>1</sup>

The court trebled this award and allowed Perkins \$289,000 as an attorney's fee (15 U.S.C. § 15) for a total of \$1,298,213.71. Standard has appealed.

Perkins started in the gasoline and oil business during 1938 as the proprietor of a single service station in the State of Washington. Over the years he acquired many more stations throughout that State and a number in Oregon. In addition, he became a wholesaler in this same territory. There he operated several bulk storage plants and sold gasoline to other wholesalers, to retailers, and to commercial users. In 1945 Perkins, together with two other dealers whose operations were similar to his own, entered into the first of a series of so-called "consignment supply contracts" with Standard, under which Standard sold them all the gasoline and oil which they required. None of the three was interested in the business of any other.

During 1952 Perkins organized two corporations—Perkins of Oregon and Perkins of Washington—to whom he respectively sold his gasoline and oil business and leased all his bulk plants and most of his service stations. The corporations continued to carry on a wholesale business but sublet all service stations, save for one operated

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<sup>1</sup> The form is denominated "special verdict." In it the above sum, referred to as the amount of the "general verdict," is divided into three parts, each labeled "special verdict"; each part is allocated to a particular claim as follows: .

- |   |              |
|---|--------------|
| "(1) . . . on the first cause of action of Clyde Perkins individually     | \$185,022.52 |
| (2) on plaintiff's second cause of action of Perkins Oil Co. of Oregon    | 84,101.14    |
| (3) on plaintiff's third cause of action of Perkins Oil Co. of Washington | 67,280.91    |

by Perkins of Washington in Vancouver, Washington. Standard knew of these transactions but did not negotiate sales contracts with the corporations or terminate the existing one with Perkins. It continued to supply the gasoline and to bill Perkins.

On December 2, 1957 the Perkins businesses were sold to a major oil company and the contract with Standard was terminated.

Fifteen months later, on March 2, 1959, Perkins filed this suit. As ultimately submitted to the jury it comprised three claims: the first, that of Perkins individually; the second, that of Perkins of Oregon; and the third, that of Perkins of Washington.

Broadly stated, Perkins' contention was that throughout a period extending from March 1, 1955, through December 1957, he and the two Perkins corporations sustained injury to business and property because (a) Standard had charged the Signal Oil & Gas Co. and the operators of Standard's Chevron and Signal Service Stations (hereinafter referred to as "Branded Dealers")<sup>2</sup> less for the same grade and quality of petroleum products than Standard had charged him and the two Perkins corporations; (b) Standard had paid the Branded Dealers, but not him and the two Perkins corporations, for services and facilities furnished by the Branded Dealers in connection with the sale of Standard's products; and because (c) Standard likewise furnished said Branded Dealers valuable services not rendered to him

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<sup>2</sup> This is the term applied in the trade to proprietors of retail service stations whom Standard authorized to use its brand names in their advertising.

and the two Perkins corporations.<sup>3</sup> He did not contend that his alleged injury resulted from his inability to compete with Standard itself but rather that his injury stemmed from Standard's price favoritism to Signal and the Branded Dealers, which favoritism impaired and destroyed competition between Perkins and certain others of those who sold Standard's products.<sup>4</sup>

The Branded Dealers purchased gasoline and oil from Standard which they in turn sold at retail. With respect to them, Perkins' story is quickly told. Because of Standard's favoritism and discrimination they were able to and did offer lower prices and better services and facilities than Perkins in marketing at retail.

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<sup>3</sup> The relevant provisions of the Robinson-Patman Act, relied upon by Perkins, are contained in Section 2(a), (d) and (e); they make it unlawful for:

Sec. 2(a) "any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition . . . with any person who . . . knowingly receives the benefit of such discrimination or with customers of any of them;"

Sec. 2(d) "for any person engaged in commerce to pay . . . a customer . . . for any services or facilities furnished by . . . such customer in connection with . . . the offering for sale of any products . . . sold . . . by such person unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities," and

Sec. 2(e) "for any person to discriminate in favor of one purchaser against another purchaser . . . of a commodity bought for resale . . . by . . . furnishing . . . any services . . . connected with the handling, sale, or offering for sale of such commodity not accorded to all purchasers on proportionally equal terms."

<sup>4</sup> Hereinafter, the name "Perkins" includes Perkins individually and also the two Perkins corporations.

Signal Oil & Gas Co., like Standard, featured in this litigation exclusively as a supplier. It assertedly passed on to its customers a large part of the more favorable price that it received from Standard and thus enabled its customers (some of whom were retailers and others jobbers) to undersell Perkins.

Section 2(a) of the Act, in terms, limits the distributing levels on which a supplier's price discrimination will be recognized as potentially injurious to competition. These are: on the level of the supplier-seller in competition with his own customer; on the level of the supplier-seller's customers; and on the level of customers of customers of the supplier-seller.<sup>5</sup>

The record in this case manifests that a substantial part of the damages assessed against Standard with respect to each claim was necessarily rested upon the marketing of gasoline and oil by a corporation known as Regal Stations Company. The conclusion is also inescapable that Regal was not a customer of a customer within the purview of Section 2(a) of the Act.<sup>6</sup> It follows that the detrimental

<sup>5</sup> Mr. Rowe, in his book, "Price Discrimination Under the Robinson-Patman Act," severely questions the validity even of this so-called "third line injury concept" included in Sec. 2(a) of the Act. Saying "this esoteric doctrine appears of dubious validity today" (p. 196) the author argues:

1. That it is doubtful that a causal relationship can exist between the supplier's lower price to a favored customer and injury to competition by that customer's customer with a disfavored customer;
2. Additionally that the concept requires supplier's control over his customer's pricing; this can give rise to serious anti-trust problems of price control.

<sup>6</sup> Regal commenced to retail gasoline and oil in Portland during the summer of 1956 and soon was operating a number of service stations there. It accompanied a well publicized entry into the market with a scale of prices well below that of other retailers and persisted in undercutting other retailers. Perkins took the position,



effect Regal exerted upon competition is not attributable to and would not support an award of damages against Standard; that the whole verdict is tainted, since the amount reflected in it by Regal's conduct cannot be ascertained; and that the judgment must be reversed and a new trial had.

Inasmuch as the case must be returned to the district court and tried anew, we believe it appropriate to briefly comment upon several of Standard's remaining points.

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which he supported with substantial evidence, that "While there had been some price disturbances in the Portland area prior to Regal, these were . . . of 'brush fire' dimensions while Regal precipitated a major conflagration"; and he further adduced proof tending to show that the impact of Regal's price policy went far beyond Portland; that it precipitated and sustained a sort of chain-reaction throughout Perkins' entire marketing area, and that it adversely affected both the wholesale and retail business carried on by Perkins.

While the record shows Regal sold Standard gasoline, it also shows that Regal purchased this gasoline from Western Hyway Oil Co., which in turn had purchased it from Signal which had originally purchased from Standard. Even granting that the proof demonstrated Standard uniformly charged Signal substantially less than Perkins, and further granting that Signal likewise passed on to its customer (Hyway) this price advantage, the competition complained of was not that with Signal or Signal's customer, Hyway.

Perkins sought to bring the competition within the statutory bounds. His contention—to again quote from his brief—was that "[b]oth Western Hyway and Regal were controlled subsidiaries of S[ignal] O[il] and G[as]."

It is true that the "close community of interest" discussed in *Press Co. v. N.L.R.B.*, 118 F. 2d 937 (D.C. Cir. 1940), *cert. denied* 313 U.S. 595 (1941), existed between these three corporations: during the relevant period Signal owned 60% of the stock of Western and similarly from the outset and until October 1957, the latter corporation owned 55% of the stock of Regal. Thus Signal was in a position to exercise control over Regal. However, this

The factual issues of whether or not the two Perkins corporations, prior to the commencement of this action, had assigned their claims to Perkins and whether the assignments were valid need not be relitigated. These issues were the subject of special interrogatories which the jury answered favorably to Perkins. They involved matters that were entirely distinct and separable from the claims themselves; they appear to have been fully developed by the evidence; and they are in no way affected by the error

fact alone is not enough. In *National Lead Co. v. F.T.C.*, 227 F. 2d 825 (7th Cir. 1955), reversed on other grounds, 352 U.S. 419 (1957) a cease and desist order against the parent corporation charged with the unlawful acts of its subsidiaries was set aside. The court held that to establish substantial identity between parent and subsidiary corporation under the Robinson-Patman Act, more must be shown than the fact that the subsidiaries were wholly owned, that they were controlled by interlocking directors and officers and that their operations were closely correlated. The test was whether the parent exercised such complete control that the subsidiaries' corporate identity was a "mere fiction"—were the subsidiaries "mere tools" of the parent. Similarly in the *Press Co.* case, cited above, the D.C. Circuit—albeit in a somewhat different context—followed and applied this same basic requirement, saying "Unless, therefore, the community of interest of which we have spoken . . . is enough to wipe out and destroy the corporate structure, the Board's conclusion that Gannett Co. was equally responsible in its corporate capacity for the acts done by Press Co. in its corporate capacity cannot be sustained. Of course, it is true that Gannett Co., as owner of all the voting stock of Press Co., was in a position to dictate its action in any corporate matter, but until legislation is adopted outlawing holding companies this alone, in circumstances like these is not sufficient to annul corporate identity . . ." (page 945). See also *Baum & Blank, Inc. v. Philco Corp.*, 148 Fed. Supp. 541 (E.D. N.Y. 1957); *Kingston Dry Dock Co. v. Lake Champlain Trans. Co.*, 31 F. 2d 265, 267 (2d Cir. 1929).

In the case before us the record reveals no substantial evidence to show that Signal in fact dictated the corporate decisions of either Western or Regal. Absent such proof, Regal must be deemed a separate and autonomous entity.

which requires a reversal of the judgment.<sup>7</sup> On the new trial the fact of the assignments will be deemed established.

The trial judge's ruling, that the relevant four year statute of limitations had not operated upon the assigned claims to bar Perkins' right to maintain suit on them, was correct.

We agree with Standard that if Perkins first asserted the claims on September 12, 1963 when, at the direction of the trial court he supplemented his contentions appearing in the pretrial order with the fact of the assignments, then his right to prosecute a suit on the claims had expired. The claims accrued not later than December 1957, and filing of the complaint in September 1959, would not have tolled the statute. "An amendment setting up such new . . . cause of action will not relate back to the date of the original petition, but will be governed by its own date and if the bar of the statute of limitations or a bar to the right to maintain such new cause of action has intervened, the new cause of action must fail." *Salyers v. United States*, 257 F. 255 (8th Cir. 1919). In the case last cited, the pleadings clearly disclosed that plaintiff's amendment to the complaint introduced into the suit a new claim upon which suit was barred. Here they do not. To the contrary, this record demonstrates with equal clarity that the suit from the time of its commencement included these claims. True, Perkins did not assert the claims as assigned claims, but he did make clear from the outset that he was asserting ownership of all property and property rights injuriously affected and for which he was seeking to recover damages. The supplement merely separated several claims initially improperly commingled into their component parts.

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<sup>7</sup> Indeed this court has previously passed on the issue. In the related case of *Standard Oil Co. v. Perkins*, 347 F. 2d 379 (9th Cir. 1965) we affirmed the trial court's denial of Standard's motion under Rule 60 (b) to set aside the judgment in that case on the grounds that the proof in this case disclosed that these same assignments upon which Perkins had relied were fraudulent and untimely.

Neither did the court err in submitting to the jury Perkins' claims based upon Standard's alleged Section 2(d) and 2(e) violations. There was some evidence that Perkins and the Perkins corporations operated some service stations and, to that extent, Standard was obliged, under those sections, to make the same proportional payments and allowances to Perkins for such items as service station rest room maintenance, painting of service stations, advertising and credit card privileges, as it did to the Branded Dealers. We perhaps should add, a seller's obligation extends only to customers who compete with each other on the same functional level of distribution. *Tri Valley Packing Ass'n. v. F.T.C.*, 329 F. 2d 694 (9th Cir. 1964). And a customer who functions both as a retailer and a wholesaler is entitled to receive proportionately equal treatment with respect to payments and services that the seller gives a competing retailer; but he is not entitled to such allowances with respect to his wholesale business as well.\*

\* A difference of legal opinion exists over the reach of Sec. 2(d) and 2(e) obligation. See Rowe "Price Discrimination Under the Robinson-Patman Act," 1964 Supplement, p. 89. The author, however, points out on page 396 of his original text:

"... the F.T.C. 1960 guides indicate a limitation of the supplier's obligations . . . to competing 'customers' and define 'customer' as someone who buys directly from the seller or his agent or broker. This resolution of the issue properly balances the possibility of law avoidance against the practical difficulties of computing appropriate benefits accruing to wholesalers and other intermediate distributors . . . and the burdens of conditioning all suppliers promotional campaigns at the retail level on their simultaneous subsidization of other distributors along the way."

This was the view taken by this court in *Tri-Valley* and recently reaffirmed in *F.T.C. v. Fred Meyer, Inc.*, 359 F. 2d 351 (9th Cir. 1966). We note that this precise question is presently before the Supreme Court pursuant to a grant of certiorari in the *Meyer* case at the last term. 386 U.S. 907 (1967).



Standard's assignments also concern the trial court's rulings on evidence and the giving of instructions relating to damages. A brief discussion of several is warranted.

It will be recalled that the verdict comprised three claims: the claim of Perkins individually, and that of Perkins of Oregon, and Perkins of Washington.

With respect to Perkins' own claim the court, over Standard's objection, permitted him to show on the issue of damages that the Perkins corporations did not pay him 1 (a) an agreed brokerage fee for securing their gasoline; (b) rentals on leases of service stations and other property, and (c) other indebtedness; (2) that he was unable to collect rentals for service stations leased to independent operators and (3) that the going concern value of his interest, as owner and lessor and as prime lessee and sublessee of service stations and bulk plants, substantially diminished.

We conclude: that items 1(a), (b) and (c) and 2 were not elements of injury properly the subject of damages, but that item 3 was. It follows that the rulings of the court were in part erroneous and in part right.

The problem is one of proximate cause. A person claiming damages must show that he was within the "target area" of the economy directly affected by the unlawful competitive practices, for "the rule is that one who is only *incidentally* injured by the violation of the antitrust laws—the bystander who was hit but not aimed at—cannot recover against the violator." *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 363 (9th Cir. 1955); *Conference of Studio Unions v. Loew's, Inc.*, 193 F. 2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952).

The solution is not an easy one and admittedly there exists a difference of judicial opinion as to what constitutes a direct (as distinguished from a remote or consequential)

injury to business or property within the meaning of Section 4 of the Clayton Act (15 U.S.C. § 15).

*Congress Building Corp. v. Loew's, Inc.*, 246 F. 2d 587 (7th Cir. 1957), contains an exhaustive canvass of many cases coupled with an illuminating discussion of the matter. In that decision the Seventh Circuit, noting that "the courts have uniformly denied recovery to stockholders . . . creditors . . . and deposed officers of a corporation . . . who claimed injury as a result of alleged antitrust violations . . .," suggests as a reason that "[t]o permit individual stockholder recovery would run counter to the traditional treatment of a corporate injury that the corporation is the proper party to redress corporate wrongs. And direct recovery by the individual creditor would give him a preference over other creditors of the insolvent business and such recovery may act to thwart the policy of the bankruptcy laws. Further, the number of stockholders and creditors might produce an insurmountable problem of multiplicity of suits." (pp. 590-591). However, the court went on to hold that a non-operating owner-lessor of a motion picture theatre had a recognizable claim for damages against its lessee and a third party who had conspired together to reduce the business at the theatre. The court pointed out that such a violation might cause injury to the reversion of the owner-lessor and that such an injury was one directly suffered. This court, in *Steiner v. 20th Century-Fox Film Corp.*, 232 F. 2d 190 (9th Cir. 1956), upon identical facts and using much the same reasoning, reached the same conclusion. However, in *Steiner* we noted that *Harrison v. Paramount Pictures, Inc.*, 115 F. Supp. 312 (D.C. E.D. Pa.) affirmed per curiam, 211 F. 2d 405 (3d Cir. 1954), cert. denied, 348 U.S. 828, a case in which the lessor was not permitted to maintain a suit, was not factually similar "because in *Steiner* the lessee was a party to the unlawful combination, whereas in *Harrison* the lessee was not." Standard vigorously argues that the distinction is material and that the net effect of *Steiner* is that an actionable injury

can result only where a conspiracy to injure the lessor is entered into between the lessee and a third person. We disagree. In our view, while the fact that the lessee did not participate in the wrongful act might give rise to problems of apportionment of damages between lessor and lessee for their respective injuries and be urged as giving rise to multiplicity of suits, these reasons do not militate in favor of the wrongdoer. As said in *Congress Building Corp. v. Loew's, Inc., supra*, (at 594) "The problem of multiplicity of suits . . . is not similar to stockholder-creditor cases where a single entity exists to redress the wrong, for here there is no such entity. In fact, if the lessor cannot sue there will be no private redress for the defendant's wrongful acts. Furthermore, multiplicity is always present where the acts of the tortfeasor injure more than one individual."\*

Many of Perkins' exhibits relating to damages treated the three Perkins businesses as one and reflected only consolidated sales, losses, etc. It was thus difficult, if not

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\* On the basis of this reasoning, Exhibit 93-E, a chart recapitulating rentals lost by the Perkins corporations on subleases to independent operators of service stations, should not have been admitted.

However, evidence showing a decline in gasoline sales by a lessor's tenant on the leased premises was properly admitted as tending to show injury to the lessor's interest in the leased property and the monetary amount of the injury. We note that Exhibits 82-J, L, and M contain general recitals that the computation is of the "Loss in Value of Business" and "Depreciation in going concern value. . . ." Such designations could well mislead a jury; moreover, it appears that the figures included business other than that done at service stations. A lessor has no interest in the business as such and the court should make clear the purpose for which the proof may be considered. Additionally, it appears that no foundation existed for the conclusion of Perkins' expert witness (reflected in the chart) that the sales volume of the leased stations would have progressively increased each year throughout the claim period at a specified rate over the base year but for Standard's asserted discrimination. Such an estimate is competent, but only if based upon facts which fairly permit the opinion.

impossible, for the jury to rationally determine whether a particular business had suffered injury and if so to allocate damages amongst the three of them. In addition, such a combination of components could readily create a distorted image by making it appear, contrary to the fact, that all had been injured. So far as practicable, proof of the items of damage peculiar to one claim should always be kept separate from that of another. This is particularly true in a case as factually complicated as this one. Additionally, we note a common vice inherent in all these exhibits. The computations appearing in them were predicated in whole or in part upon the premise that Perkins was unable to compete with Regal because of Standard's price discrimination. But, as pointed out earlier in this opinion, Section 2(a) of the Act does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard. On that ground alone, none of these exhibits should have been admitted into evidence.

Among the defenses urged by Standard was the one provided for in Section 2(b) of the Act (15 U.S.C. § 13(b)). That section, in a proviso, permits a discriminating seller to rebut "the prima facie case . . . by showing that his lower price . . . to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor . . . ."

As part of its proof Standard adduced testimony from one of its officers to the effect that six months before Standard lowered its price to Signal, he was informed that a competitor, Union Oil Company, had made Signal such an offer and that Standard's reduction which followed was generated by this intelligence. The court refused as irrelevant Standard's offer of sales records from Union's files, dated several months after Standard's price reduction. Despite its *ex post facto* nature, this proof would have afforded the basis for an inference that the prices were



those offered during the critical period by Union; thus the records would have served a dual purpose as direct evidence of the Union's prices and to corroborate the testimony of Standard's witness.

Standard makes a more serious objection with reference to the court's instruction on this issue. The jury was told that to establish the affirmative defense the burden was upon Standard to prove its competitor had made "a definite offer" of which it (Standard) was aware. The instruction, standing alone, was clearly erroneous, for the Supreme Court declared in *Trade Commission v. Staley Co.*, 324 U.S. 746, 759-60 (1945) that "Section 2(b) does not require the seller to justify price discriminations by showing that in fact they met a competitive price. . . . We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally lower price of a competitor."<sup>10</sup>

Other assignments urged by Standard in its brief involve matters not likely to occur during the course of another trial and we therefore, in order to avoid unduly prolonging this opinion, do not discuss them. Our failure to do so, however, is not to be taken as an appellate approval of every ruling not specifically discussed herein.

The judgment is reversed and the cause remanded for a new trial consistent with the views expressed in this opinion.

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<sup>10</sup> The court also gave an instruction, requested by Standard, which correctly stated the rule.





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**SUPREME COURT, U. S.**

**No. 624**

United States Supreme Court, U.S.  
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**In the Supreme Court of the  
United States**

**OCTOBER TERM, 1968**

**CLYDE A. PERKINS, *Petitioner***

**VS.**

**STANDARD OIL COMPANY OF CALIFORNIA**

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit**

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# In the Supreme Court of the United States

OCTOBER TERM, 1968

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CLYDE A. PERKINS, *Petitioner*

VS.

STANDARD OIL COMPANY OF CALIFORNIA

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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## Brief for Respondent in Opposition

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### OPINIONS BELOW

The opinion of the Court of Appeals (Pet.App. 3a-16a) is reported at 396 F.2d 809. The Court of Appeals' opinions denying petitioner's motion for rehearing (Pet.App. 2a-3a) and in response to petitioner's motion for clarification (Pet.App. 1a) are unreported. Judge East, in the trial court, rendered no opinion.

### JURISDICTION

The judgment of the Court of Appeals was entered on November 2, 1967. The petition for rehearing was denied on July 11, 1968. The petition for a writ of certiorari was filed on October 9, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).



### QUESTION PRESENTED

Respondent Standard Oil Company of California (Standard) sold gasoline to petitioner Perkins, a wholesaler.<sup>1</sup> At the same time, Standard sold gasoline to Signal Oil and Gas Company (Signal) at a slightly lower price. Signal in turn resold the gasoline to Western Hyway Oil Company (Western), a wholesaler. Western in turn resold the gasoline to Regal Stations Company (Regal), a retailer, which allegedly cut prices to the injury of petitioner.

The question is whether the Court of Appeals correctly held that the provisions of Section 2(a) of the Clayton Act relating to injury at three designated levels of competition do not give a cause of action to a person who claims to have been injured by a price discrimination allegedly passed on to the fourth level of competition, i.e., at the distribution level of a customer of a customer of the favored purchaser from the original seller.

### STATEMENT

The petition states a case in which Standard, "a billion dollar corporation" (Pet. 5), with "predatory" intent (Pet. 12), made sales to Signal at discriminatory prices with "every reason to know that Signal would pass along to Regal those discriminatory price advantages in order to injure Perkins" (Pet. 20-21); that the favorable price differential to Signal in fact was passed on to Regal in such an amount that it "enabled Regal to break the market" (Pet. 11), thus driving Perkins out of business.

This statement is inaccurate. The relevant facts are as follows:

Standard sold gasoline to petitioner, a wholesaler. At the same time, Standard sold gasoline to Signal. Signal in turn resold the gasoline to Western, a wholesaler. Western in turn resold the gasoline to Regal, a service station operator. At the trial petitioner claimed that Regal, immediately

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1. Petitioner also operated retail stations. See pp. 5, 12, *infra*.

upon opening its first station in Portland, dropped the retail price 4 cents a gallon (Tr. 369), thus precipitating a price war which spread throughout petitioner's marketing area. Actually, at the time Regal opened its station in September, 1956, Standard's prices to Signal were *higher* than its prices to petitioner, and continued higher until January 1, 1957 (footnote 4, p. 4, *infra*).<sup>2</sup> And from January 1, 1957, until December 2, 1957 (the end of the period covered by this case), Standard's price differentials in favor of Signal varied from thirty-six one hundredths of a cent to forty-five one hundredths of a cent, except for two days when it reached a high of sixty-eight one hundredths of a cent (footnote 5, p. 5, *infra*).<sup>3</sup>

But even these small differentials were immediately lost in the distributive system. Signal did not sell directly to Regal, the alleged price cutter. It sold to Western, a wholesaler, which in turn sold to Regal. And Signal retained at its level of distribution the small price differential, for when Regal opened the first of its three stations, in September, 1956, Regal's supplier, Western, was charged a higher price by Signal than Standard was charging at the same time to

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2. In January, 1957, Standard made a retroactive adjustment to Signal of sixty-five one hundredths of a cent per gallon for gasoline purchased in 1956. This adjustment was retained by Signal and was not passed on to Western who in turn sold to Regal (Exh. 1458-A; Tr. 4745, 4747). However, even if the adjustment were applied retroactively, it would have given Signal a price advantage of only thirty-seven one hundredths of a cent over Perkins (Exh. 1550; See footnote 4, p. 4, *infra*).

3. These random differentials, obviously too small to have any bearing upon the retail price wars of which petitioner complains, were due to the fact that Standard's prices to Signal were determined by an over-all contract applicable to all of Signal's purchases from Standard throughout the Western States. Signal is a large integrated oil company. It is a substantial producer of crude oil. During the period involved, it sold crude oil (some 45,000 barrels a day) to Standard (Tr. 5454). Standard refined the crude oil and returned to Signal the gasoline Signal required to supply its entire market.

petitioner (see footnote 5, p. 5, *infra*). This situation continued until June, 1957, when price increases by Standard resulted in petitioner paying to Standard prices higher than Western paid to Signal of thirty-five ten thousands of a cent from June until November, and, in the month of November, of from eighty-seven one thousandths of a cent to a top of approximately one tenth of a cent.

There is no evidence in the record of the price Regal paid to Western.

In footnotes, we set out (1) the prices charged by Standard to petitioner for gasoline resold in the area where Regal operated and the prices charged at the same time to Signal for gasoline ultimately distributed by Regal,<sup>4</sup> and (2) the prices charged by Signal to Western (Regal's supplier)

4. Exhibit 1550:

Date	Signal Oil and Gas Company Net Prices		C. A. Perkins Net Proceeds Payable to Standard at Willbridge—Destination Vancouver—Ex Tax		Difference Between Signal Oil and Gas Company Net Prices and C. A. Perkins Net Proceeds	
	Regular	Ethyl	Regular	Ethyl	Regular	Ethyl
*8/27/56-12/31/56	.129	.149	.1262	.1462	.0028	.0028
1/ 1/57- 1/16/57	.1224	.1424	.1262	.1462	(.0038)	(.0038)
1/17/57- 3/18/57	.1274	.1474	.1312	.1512	(.0038)	(.0038)
3/19/57- 3/25/57	.1274	.1474	.131035	.151035	(.003835)	(.003835)
3/26/57- 3/31/57	.1274	.1474	.131035	.151035	(.003835)	(.003835)
4/ 1/57- 4/ 2/57	.1272	.1472	.131035	.151035	(.003835)	(.003835)
4/ 3/57- 6/17/57	.1292	.1512	.133035	.153035	(.003835)	(.003835)
6/18/57- 6/21/57	.1292	.1512	.133035	.153035	(.003835)	(.003835)
6/22/57- 6/23/57	.1292	.1512	.136035	.158035	(.006835)	(.006835)
6/24/57- 6/30/57	.1322	.1542	.136035	.158035	(.003835)	(.003835)
7/ 1/57-11/20/57	.1315	.1535	.136035	.158035	(.004535)	(.004535)
11/21/57-12/ 2/57	.1315	.1535	.13587	.15787	(.00437)	(.00437)

In January, 1957 a payment was agreed upon and made by Standard to Signal Oil and Gas Company upon the basis of \$.0065 per gallon of gasoline delivered by Standard to Signal Oil and Gas Company during the period 8/27/56 through 12/31/56.

\*Date of first delivery to Signal Oil and Gas Company at Willbridge.

and the prices charged at the same time by Standard to petitioner.<sup>5</sup>

*Branded Dealers.* While petitioner operated principally as a wholesaler, he also operated service stations. Standard sold gasoline to its own branded service stations at the posted tank-truck price. Perkins bought all of his gasoline, including the gasoline he sold at retail, at the jobber price (wholesale) of 4 to 5½ cents per gallon below the posted tank-truck price (Tr. 365, Exhs. 24BBB, 24CCC, 1448, 1511A, 1511B). During price wars Standard temporarily reduced its price to dealers whenever the retail prices at competitive major brand stations declined below designated levels (Exhs. 1453A, 1453B; Tr. 4915-4917).

It is not true, as petitioner states (Pet. 10), that Standard's "retail Branded Dealers [during price wars] often purchased gasoline from Standard at lower net prices than Perkins, who operated primarily as a wholesaler." In fact, except for one week in the town of Centralia, Washington, Standard's prices to Perkins were always lower than its

Date of Change	Ethyl		Regular	
	Standard's price to Perkins, destination Vancouver (1)	Signal Oil and Gas Company's price to Western Hyway (2)	Perkins payable to Standard, destination Vancouver (1)	Signal Oil and Gas Company's price to Western Hyway (2)
8/27/56	14.62	15.30	12.62	13.30
1/17/57	15.12	15.30	13.12	13.30
1/21/57	15.12	15.80	13.12	13.80
3/19/57	15.1035	15.80	13.1035	13.80
4/ 3/57	15.5035	15.80	13.3035	13.80
4/15/57	15.5035	15.80	13.3035	13.60
6/22/57	15.8035	15.80	13.6035	13.60
11/ 1/57	15.8035	15.70	13.6035	13.50
11/21/57	15.787	15.70	13.587	13.50

Source: (1) Exh. 1550.

(2) Exh. 1458-A.



prices to its own dealers. (Exhs. 1456-A, 1457-A, 1463, 1467, 1477-1483, 1485, 1488-1491, 1493-1495, 1497, 1500.)<sup>6</sup>

Standard's branded dealers sold gasoline under the Standard brand names, used Standard's credit cards, and were given a one-fourth of a cent per gallon allowance for the maintenance of clean rest rooms (Tr. 487, 1593). Petitioner also refers to advertising allowances, free delivery services, and free station painting (Pet. 10). There is no evidence in the record relating to "free delivery services." The only evidence in the entire record as to advertising and painting allowances to any of Standard's numerous dealers is the testimony of one dealer in Portland that Standard once painted his station and once gave him an advertising allowance, in an unspecified total amount of one-tenth of a cent per gallon for up to 50 per cent of his advertising expense. (Tr. 478).<sup>7</sup>

#### **The Proceeding Below.**

The Court of Appeals reversed the judgment for petitioner and remanded the case for a new trial. It held that a substantial portion of the award rested on the activities of Regal and that no claim of damage could be based on that company's activities, since it was neither a customer of Standard nor a customer of the favored purchaser from Standard (Pet.App. 7a-8a). The court further held that it was error to submit to the jury Perkins' claims of Standard's alleged violations of Sections 2(d) and 2(e) with respect to branded dealers to the extent that Perkins operated

<sup>6</sup> For one week during a price war in October, 1955, the temporary assistance given by Standard to four of its dealers in one price zone in the town of Centralia resulted in a price one cent lower than Standard's price to Perkins on regular gasoline, but not on Ethyl (Exh. 1497). At no other time during the period covered by this suit did any of Standard's branded dealers ever receive a lower price than petitioner.

7. As to Standard's allowances to dealers see p. 12, *infra*.

as a wholesaler, leaving Perkins free on retrial to show damages for such violations, if any, to the extent he operated as a retailer (Pet.App. 11a, 2a-3a). It further held that certain damage items of Perkins individually were erroneously submitted to the jury (Pet.App. 12a-14a), and that the trial court erred in admitting damage computations not supported by the evidence (Pet.App. 14a-15a). It also held that error was committed by the court in the exclusion of evidence and in its instructions to the jury relating to respondent's "good faith meeting of competition" defense (Pet. App. 15a-16a). And finally it adverted to numerous other errors urged by respondent which it said it would not pass upon for the reason that it felt that such errors were not likely to occur in a new trial—expressly stating that its failure to discuss these errors was not to be taken as approval of the rulings complained of (Pet.App. 16a).

### ARGUMENT

1. The decision of the court below that the clause of section 2(a) of the Robinson-Patman Act relating to injury to specific levels of competitors does not give a cause of action for claimed injury caused by a price discrimination allegedly passed on to the fourth level of competition is clearly correct. There is no conflict of decisions. Indeed, in the thirty-two years since the enactment of the Act no one has even raised the question.

The language of the statute is specific. Section 2(a) makes it unlawful for:

"... any person engaged in commerce ... to discriminate in price between different purchasers of commodities of like grade and quality, ... where the effect of such discrimination may be ... to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them ..."

This section was added to make clear that proof of a violation no longer required a showing of injury to competitive conditions in a whole market, where injury to the competitive position of a single marketer on the primary, secondary, or tertiary line of competition is established (see Hearings on H.R. 8442, H.R. 4995 and H.R. 5062, before House Committee on the Judiciary, 74th Cong., 1st Sess., pp. 251-252 (1935); 80 Cong. Rec. 3113 (1936) (remarks of Senator Logan)). The chairman of the House subcommittee which considered the bill specifically stated that the Act was intended to extend only to the third line of competition, i.e., to customers of either "the grantor or grantee."

Nowhere in the Committee reports, in any decision of any court with which we are familiar, or in the writings of any commentators is there any suggestion that the Robinson-Patman amendments were intended to give a cause of action to persons injured at levels of competition more remote than customers on the third level of competition."

8. 80 Cong. Rec. 9417 (1936) (remarks of Rep. Utterback):

**"EFFECT ON COMPETITION"**

The discriminations prohibited by this bill are those whose effect may be:

1. Substantially to lessen competition in any line of commerce;
- or,
2. To tend to create a monopoly in any line of commerce; or,
3. To injure, destroy, or prevent competition:
  - (a) With any person who either grants or knowingly receives the benefit of such discrimination; or,
  - (b) With customers of either of them (i. e., the grantor or grantee)."

9. In the leading texts on the Robinson-Patman Act the authors discuss fully the Robinson-Patman amendment and describe its coverage at the primary, secondary and tertiary lines. Nowhere is it suggested that the amendment was intended to cover subsequent levels of distribution. See Rowe, *Price Discrimination Under the Robinson-Patman Act* (1962), pp. 36-37, 141 et seq., 172 et seq.; Patman, *Complete Guide to Robinson-Patman Act* (1963), pp. 47, 49; Kintner, *An Antitrust Primer* (1964), pp. 61, 64-68.

If the language of the statute is disregarded to give a cause of action to persons allegedly injured at the fourth level of competition, it can as logically be construed to extend to the fifth, sixth or subsequent levels. It is consistent with the Congressional purpose, and required by the Congressional language, to recognize that the scope of the 1936 extension of the statutory reach was not limitless, but was confined to those levels of competition where a price discrimination can reasonably be assumed to have an identifiable impact upon a particular marketer. Indeed, the present record exemplifies that proof of causation so far down a chain of distribution deteriorates into impermissible guesswork and speculation.

While this Court has never had occasion to consider the point, the language of its decision in *Federal Trade Comm'n v. Sun Oil Co.* (1963) 371 U.S. 505, 514-515, is pertinent:

"Reading the words to have 'their normal and customary meaning,' *Schwegmann Bros. v. Calvert Corp.*, 341 U. S. 384, 388, the § 2 (b) phrase 'equally low price of a competitor' would seem to refer to the price of a competitor of the seller who grants, and not of the buyer who receives, the discriminatory price cut. (In this case, this would mean a competitor of Sun, the refiner-supplier, and not a competitor of McLean, the retail dealer.) Were something more intended by Congress, we would have expected a more explicit recitation as, for example, is the case in § 2 (a) in which the intent to give broader scope was expressly effected by the prohibition of price discriminations which, *inter alia*, adversely affected competition not only with the seller (in this case Sun) who grants the favored price, but with the knowing recipient thereof (in this case McLean) and 'with customers of either of them.' Thus, since Congress expressly demonstrated in the immediately preceding provision of the Act that it knew how to expand the applicable concept of competition



beyond the sole level of the seller granting the discriminatory price, it is reasonable to conclude that like clarity of expression would be present in § 2 (b) if the defense available thereunder were similarly intended to be broadly read to encompass, as is urged, the meeting of lower prices set not only by the offending seller's competitor, but also by the purchaser's competitor. There is no reason appearing on the face of the statute to assume that Congress intended to invoke by omission in § 2 (b) the same broad meaning of competition or competitor which it explicitly provided by inclusion in § 2 (a); the reasonable inference is quite the contrary."<sup>10</sup>

Actually petitioner does not seriously attack the ruling of the Court of Appeals on this point. He cites no authorities and criticizes the court's decision only in passing and in general terms (Pet. 14-15). He relies principally on the point next considered.

2. Petitioner contends that, accepting *arguendo* the ruling of the Court of Appeals that fourth-line injury is not cognizable under the Robinson-Patman amendments to the original Clayton Act (Pet. 15-16), the jury in this case "could properly have found that the effect of Standard's price discrimination was 'substantially to lessen competition . . . in any line of commerce,' i.e., the wholesale and retail marketing of gasoline in the Pacific Northwest" (Pet. 16), and that, therefore, he is entitled to recover because the original provisions of Section 2, which were unchanged by the Robinson-Patman amendments, give a cause of action to any person injured by a price discrimination, the effect of which "may tend substantially to lessen competition 'in any

10. See also *F.T.C. v. Anheuser-Busch, Inc.* (1960) 363 U.S. 536, 542-543; *Klein v. Lionel Corporation* (3 Cir. 1956) 237 F.2d 13, 15.

line of commerce' " (Pet. 23), regardless of the level of distribution at which the injury occurs. Specifically, petitioner states that nothing "justifies the Ninth Circuit's holding that petitioner's proof, which satisfied the stricter standard of the original Section 2, provides no basis for a cause of action" (*ibid.*).

The Court of Appeals made no such holding. Petitioner did not raise the point in that court and, therefore, nowhere in the opinion of the court is it mentioned or discussed.

Whether the record in this case, directed primarily to a showing of competitive injury to petitioner, would support a finding that, as a result of Standard's slight price discrimination in favor of Signal, competition in "the wholesale and retail marketing of gasoline in the Pacific Northwest" (Pet. 16) was lessened depends upon the facts in the more than 6,000 pages of transcript and over 1,000 exhibits of the record. Respondent submits no such finding can be made on the record. And this would seem readily apparent since the negligible price discrimination was not passed on by Signal. In any event, if there is merit in the point, raised *de novo* in this Court, it is open to a resolution on the retrial.

3. Petitioner contends that since Signal owned 60 per cent of the stock of Western, and Western owned 55 per cent of the stock of Regal, the separate corporate entities of these companies should have been disregarded and Signal, Western and Regal treated as one entity. Otherwise, he argues, powerful buyers and sellers could circumvent the statute by the device of creating separate subsidiaries (Pet. 26).

The rule applied by the Court of Appeals does not lend itself to misuse. The court held that if in fact the subsidiaries were controlled, their separate identities could be disregarded (Pet.App. 8a-9a). It pointed out, however, that

there is no evidence in this record that the corporate decisions of either Western or Regal were dictated."

On the retrial of this case petitioner will be free to attempt to prove that there is a basis for disregarding the separate corporate entities.

4. Petitioner complains that during the price wars caused by Regal, Standard subsidized its own branded dealers without giving petitioner comparable assistance, and that Standard gave allowances and services to its dealers not made available to the stations operated and supplied by petitioner (Pet. 10-11).

Standard's dealers did not have a more favorable price (see p. 5, *supra*). Indeed, petitioner purchased from Standard at the jobber's (wholesale) discount of 4 to 5½ cents lower than Standard's normal price to its dealers (see p. 5, *supra*).

As to allowances, the court below expressly left it open for petitioner to prove on the retrial any injuries he may have suffered, as a retailer, from discriminatory allowances and services, if any, accorded to Standard's own dealers but denied to petitioner (Pet.App. 11a, 2a-3a).

5. Finally, petitioner says that he and Signal were competing wholesalers (Pet. 9, 16, 24) and that the court below

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11. Petitioner's description of Western (Pet. 7) is misleading. Forty per cent of the stock of Western was owned by three individuals who were officers of Western and strangers to Signal (Tr. 4739). Western was a large wholesaler of petroleum products with a marine terminal in Sacramento, supplying wholesalers and retailers (Tr. 4738). During 1957 it bought more than 50 per cent of its total volume from suppliers other than Signal (Tr. 415; Exhs. 1711, 1458D). Western owned 55 per cent of the stock of Regal which operated three service stations in Portland. The balance of Regal's stock was owned by several individuals not otherwise connected with Western or Signal (Tr. 4740). There was no evidence that Signal ever directed or controlled the activities of Western or of Regal.

should have affirmed the judgment on the ground that petitioner was injured at the secondary level.<sup>12</sup>

This question was not passed upon by the Court of Appeals, the thrust of petitioner's whole case having been directed to his claim of injury by Regal at the fourth level of distribution. Respondent knows of no evidence in the record that petitioner and Signal ever competed for the trade of anyone. Be that as it may, petitioner's contention that he suffered injury at the secondary level raises a factual issue which was not passed upon by the court below and which turns upon all of the evidence in this large record. Here again petitioner is free to prove on the retrial any injury he may have suffered at the secondary level.

### CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 7, 1968.

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12. It is not true as petitioner asserts (Pet. 24), that the trial court "submitted to the jury the question whether Standard's favored purchaser (Signal) and its disfavored purchaser (Perkins) were competitors." Petitioner cites pages 6341-42 and 6347 of the transcript. At pages 6341-42 the trial court was merely stating the contentions of the parties. Page 6347 says nothing about the point. In fact, this question was not submitted to the jury.





**NOV 29 1968**

**No. 624**

**JOHN F. SAWS, CLERK**

**IN THE**  
**Supreme Court of the United States**  
**OCTOBER TERM, 1968**

**CLYDE A. PERKINS, *Petitioner,***

**VS.**

**STANDARD OIL COMPANY OF CALIFORNIA, *Respondent.***

**On Petition for Writ of Certiorari to the United States Court  
of Appeals for the Ninth Circuit**

**REPLY BRIEF FOR PETITIONER**

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IN THE  
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OCTOBER TERM, 1968

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CLYDE A. PERKINS, *Petitioner*,

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On Petition for Writ of Certiorari to the United States Court  
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**REPLY BRIEF FOR PETITIONER**

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Petitioner Clyde A. Perkins was awarded \$336,404.57 in actual damages by a jury which found that respondent Standard Oil Company of California had unlawfully injured Perkins, in violation of Section 2 of the Clayton Act, by, *inter alia*, selling to his competitors at discriminatorily lower prices. The district court trebled the award and allowed Perkins \$289,000 in lawyers' fees, for a total judgment against Standard of \$1,298,213.71. The Ninth Circuit reversed and remanded the case for a new trial. On October 9, 1968, Perkins filed a petition for a writ of certiorari, seeking



review of the court of appeals' judgment and reinstatement of the jury verdict.

(1) In its brief in opposition, Standard repeatedly denigrates its price discriminations in favor of Signal, characterizing them as "small" and "negligible" (Br. in Opp. 3, 11): Those adjectives are, to say the least, hardly a fair description of Standard's rebates to Signal Oil and Gas Company of more than \$1 million, a substantial portion of which was directly allocable to Signal's purchases in the Pacific Northwest—the area served by Perkins (see Ex. 23C; Pet. 8 fn. 5).

Beyond this, whether Standard discriminated in price against Perkins and, if so, in what amount, were questions of fact properly submitted to the jury and resolved in favor of petitioner. The jury found that Standard's discriminations had damaged Perkins by more than \$330,000, and the Ninth Circuit did not set aside the jury's conclusions in this regard. Standard's resubmission to this Court of arguments rejected by the jury is plainly without merit.<sup>1</sup>

(2) Perkins contends that the court of appeals erred in not upholding the jury verdict on the ground that Standard's discriminations in favor of Signal injured him in his competition with Signal—an example of second line injury which the court mistakenly characterized as fourth line. (Pet. f6, 24). Without any attempt to focus upon and rebut the legal merits of this contention,<sup>2</sup> Standard argues that the issue

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<sup>1</sup> For example, Standard cites Ex. 1550 as authority for the allegation that its price discriminations in favor of Signal amounted to very little per gallon (Br. in Opp. 4 fn. 4). Perkins presented evidence to the contrary (see Ex. 93 I, M, and N), and the jury presumably believed Perkins.

<sup>2</sup> Standard cites no cases in support of the decision of the Ninth Circuit, and that decision runs counter to the cases cited at Pet. 24.

whether petitioner and Signal were competing purchasers never was submitted to the jury (Br. in Opp. 12-13 and fn. 12). That argument simply misstates the facts.

The trial judge charged the jury that Perkins claimed he was injured by having to buy from Standard "at higher prices than the prices charged by Standard to *plaintiff's competitors* with respect to gasoline both on regular and premium grade. The particular *competitors concerned are Signal Oil and Gas Company* and Chevron dealers and Signal dealers . . ." (Tr. 6340-41, emphasis added). Continuing, the judge noted that one of the essential elements of this aspect of Perkins' claim was proof "that Standard sold gasoline to Clyde Perkins at higher prices than the prices charged by Standard on reasonably contemporaneous [*sic*] sales of gasoline of the same type to *competitors*" (Tr. 6347, emphasis added). In a reiteration of the above charge, the words "*of plaintiff*" were added after "*competitors*." (Tr. 6350, emphasis added). Thus, this issue was in fact properly submitted to the jury, and the Ninth Circuit erred in failing to uphold the jury verdict on that ground.<sup>3</sup>

(3) Petitioner also contends that, under the decision in *Van Camp & Sons Co. v. American Can Co.*, 278 U.S. 245 (1929), the jury verdict should have been upheld on the ground that the effect of Standard's price discriminations in favor of Signal was "substantially to lessen competition . . . in any line of commerce"—the wholesale and retail marketing of gasoline

<sup>3</sup> The issue also was preserved in the court of appeals, contrary to Standard's suggestion (Br. in Opp. 13). See, e.g., Index to Brief of Appellee, p. i. ¶ a ("Price differential is conceded in favor of Signal Oil & Gas and Chevron and Signal dealers, all direct competitors of plaintiff.")

in the Pacific Northwest (*e.g.*, Pet. 20-21). Whether Signal and Perkins were competitors is irrelevant to this issue since, whatever Signal's functional level in the market might have been, Standard's discriminations in favor of Signal caused Perkins—the largest independent wholesaler in the area—to be driven out of business. Standard, apparently conceding that this issue was submitted to the jury (see Pet. 17), argues only that it was not raised in the court of appeals. Again, Standard's argument is premised upon a misstatement of the facts.

In his brief in the court of appeals, Perkins argued that Standard's price discriminations, in addition to specifically disadvantaging him as a competitor of Signal, lessened competition throughout the entire Pacific Northwest market, aggravating existing tendencies toward monopolization (Brief for Appellee, pp. 28-31, 38-42). Indeed, as Perkins pointedly observed in the Ninth Circuit, the district judge had noted that the question whether the entire Pacific Northwest market was "upset" by Standard's discriminations was a key issue for the jury to decide (Tr. 3555, quoted at Brief for Appellee, p. 63):

"If the jury accepts some of the evidence in testimony of the plaintiff, the whole Western market from Olympia to Roseburg was affected . . . . I don't know if they are going to accept it or not, but there is evidence in the case which would warrant that. Now, if they do, that is, the whole marketing area. It is a question for the jury." [Fn. omitted.]

In the same vein, when petitioning for rehearing Perkins argued that the Supreme Court had expressly rejected a functional level limitation on the reach of Section 2 of the original Clayton Act in the *Van*

*Camp* decision, focusing instead on commercial realities to determine whether competition had been lessened in any realistic market.<sup>4</sup> Thus, contrary to Standard's contention, this issue was properly submitted to the jury and was preserved in the court of appeals. The Ninth Circuit erred in not upholding the jury verdict on that ground.

(4) Finally, brief mention should be made of Standard's suggestion that all of petitioner's contentions may be resolved at the new trial ordered by the Ninth Circuit (Br. in Opp. 11, 12, 13). The jury verdict in favor of Perkins was rendered almost five years ago, and Standard's discriminations occurred between 11 and 13 years ago. While the desire of Standard to

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<sup>4</sup> "As originally written, 2(a) proscribed discrimination where it may 'lessen competition or tend to create a monopoly in any line of commerce.' It had no 'functional level' limitation. The Supreme Court explicitly rejected reading such limitation into § 2(a) in the only case posing that question (*Van Camp v. Am. Can Co.*, 278 U.S. 245 (1929)). The Court held it applied to discrimination in both buyer and seller lines, and that:

"These facts bring the case within the terms of the statute, unless the words "in any line of commerce" are to be given a narrower meaning than a literal reading of them conveys. The phrase is comprehensive and means that if the forbidden effect or tendency is produced in *one* out of *all* the various lines of commerce, the words "in *any* line of commerce" literally are satisfied (p. 253).

"The line of commerce in which Perkins and SOG [Signal] competed was functionally similar to Van Camp." [Answer of Appellee to Response to Petition for Rehearing, p. 6.]

In denying rehearing the Ninth Circuit expressly stated that the petition "[e]ssentially . . . is *nothing more than a repetition of arguments* concerning assignments, which we are satisfied were all adequately considered and correctly passed upon by our written opinion" (Pet. 2a, emphasis added).



prolong the ultimate resolution of this case is understandable, it is clear that the orderly administration of justice requires that the important questions raised in the petition be resolved at this time, particularly in light of Mr. Perkins' eighty years of age.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 1968



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1968

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No. 624

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CLYDE A. PERKINS, *Petitioner,*

vs.

STANDARD OIL COMPANY OF CALIFORNIA, *Respondent.*

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On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit

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BRIEF FOR PETITIONER

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OPINIONS BELOW

The opinion of the court of appeals is reported at 396 F. 2d 809 (A. 104-17). The court's opinion denying rehearing is reported at 396 F.2d 817 (A. 103-04). The court's opinion on motion for clarification is incorporated in the final two paragraphs of the main opinion, *id.*, at 817. (A. 102).

## **JURISDICTION**

The jury verdict was rendered December 20, 1963 (A. 99-101). The judgment of the court of appeals was entered November 2, 1967 (A. 104). A petition for rehearing was denied on July 11, 1968, and a judgment on motion for clarification also was entered that same day (A. 102, 103). The petition for a writ of certiorari was filed on October 9, 1968, and it was granted January 13, 1969. 393 U.S. 1013. The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1).

## **QUESTIONS PRESENTED**

Petitioner Clyde A. Perkins—formerly one of the largest independent gasoline wholesalers and retailers in the Pacific Northwest—brought this action against Standard Oil Company of California charging that Standard violated Section 2 of the amended Clayton Act by selling gasoline at substantially lower prices to a competing wholesaler in the area and by not making available to petitioner payments, services and facilities granted to other Pacific Northwest retailers. Petitioner alleged that as a result of Standard's discriminations he was driven out of business. The jury returned a verdict in favor of petitioner, and it assessed actual damages of over \$330,000. The court of appeals set aside the entire verdict because some of petitioner's proof on the Section 2(a) aspects of his claim demonstrated (i) that the wholesaler obtaining the discriminatorily lower price, Signal Oil & Gas Company, resold the gasoline to one of its subsidiaries, Western Hyway Oil Company; (ii) that that subsidiary, in turn, resold to one of its subsidiaries, a retail marketing chain, Regal Stations Co.; and (iii) that Regal—to which the benefits of the discriminatorily lower price had

been passed—precipitated a price war which adversely affected petitioner's overall wholesale and retail business. The court ruled, as a matter of law, that "Section 2(a) of the Act does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard." The questions presented are:

(1) Whether Standard's discrimination in price between competing wholesalers—which substantially lessened competition in the Pacific Northwest wholesale and retail gasoline markets—is immune from attack under Section 2(a) of the Clayton Act solely because the most direct and immediate competitive injury was felt at the retail level and, in reaching that level, Standard's gasoline was resold by the favored wholesaler to a majority-owned subsidiary which, in turn, resold again to its majority-owned retail outlets.

(2) Whether the jury's damage award to petitioner, considered in light of the record evidence and the district court's instructions, should have been upheld as a just and reasonable estimate of the amount of damages sustained by petitioner as a result of Standard's unlawful price and price-related discriminations against him.<sup>1</sup>

#### STATUTES INVOLVED

(1) Section 2 of the Clayton Act, as amended, 49 Stat. 1526, 15 U.S.C. § 13, provides in pertinent part as follows:

"[Sec.] (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate

<sup>1</sup> Petitioner raises question (2) above pursuant to footnote 7, page 13, of the petition for certiorari.

in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them."

(2) Section 4 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 15, reads as follows in pertinent part:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws . . . shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

### STATEMENT

#### 1. Proceedings Below

On March 2, 1959, petitioner, Clyde A. Perkins, brought suit against respondent, Standard Oil Company of California (Standard), to recover treble damages for injuries resulting from Standard's price and price-related discriminations in the sale of gasoline and oil to petitioner in violation of Sections 2(a), (d) and (e) of the Clayton Act from March 2, 1955, through December 2, 1957. On December 20, 1963, after a protracted trial, the jury returned a verdict for petitioner and assessed \$336,404.57 in damages against Standard. The court trebled the award and, after a separate hearing, allowed Perkins \$289,000 as attorney's fees for a total judgment against Standard of \$1,298,213.71.



Standard appealed to the United States Court of Appeals for the Ninth Circuit. Oral argument was presented in June 1965, and, on November 2, 1967—almost four years after the jury verdict—the court of appeals reversed the district court judgment and remanded the case for a new trial. This Court granted certiorari on January 13, 1969.

## 2. The Persons Involved

### (a) Petitioner

Petitioner Clyde A. Perkins was one of the largest independent distributors of gasoline and oil in the Pacific Northwest States of Washington and Oregon (Ex. 4A, 4B, 5, 6, 21A).<sup>2</sup> He started in the petroleum business in 1928 as the operator of one service station in the State of Washington (A: 118-19). During the next several years Perkins acquired and built many more stations both in Washington and Oregon. He also became a wholesaler in this area, operating trucking equipment and bulk storage plants, and selling gasoline to other wholesalers, retailers, and commercial users (A. 105; Ex. 99).

In 1945, as the result of discussions initiated by Standard, Perkins, together with Messrs. Lee Powell and Robert Harris, two other independent gasoline dealers, entered into the first of a series of supply con-

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<sup>2</sup> The parties' documentary evidence is cited as "Ex. —." Ex. 1-429 were introduced by petitioner; Ex. 1000A-1715B were introduced by Standard. "Tr. —" references are to the unprinted transcript of proceedings in the district court. "R. —" references are to the district court file of pleadings and other matters not included in the transcript of testimony. All references to those portions of the record contained in the printed Appendix are cited as "A. —." References to printed documents are cited to their exhibit numbers and Appendix pages, e.g., Ex. 93-B, A. 542. The places in the record where each cited exhibit was offered and received in evidence are listed in Appendix A to this brief, pp. 78-79, *infra*.

tracts with Standard, under which Perkins purchased substantially all his gasoline requirements from 1945 through December 1957 (A. 105, 122-25; Tr. 1624-28; Ex. 1).<sup>3</sup> Using the trade name "Champion," the Perkins-Powell-Harris business expanded rapidly, and by the mid-1950's they were selling over 30,000,000 gallons of petroleum products annually, 52 percent of which flowed through Perkins outlets (Tr. 1626-27; Ex. 23H, 82, A. 518, 528-39). By the mid-1950's Perkins himself was selling over 8 percent of Standard's total gallonage in the Pacific Northwest while operating only in less than one-third of the area (Ex. 2, 102, 1449, A. 493, 549, 587; Ex. 4A, 4B; Tr. 1626; A. 373-74).

In 1952 petitioner organized two corporations—Perkins Oil Company of Oregon and Perkins Oil Company of Washington—to which he transferred his gasoline and oil business and leased all his bulk plants and most of his service stations (A. 105-06, 131-34; Tr. 154-74).<sup>4</sup> No real estate was ever deeded to or purchased by the corporations (A. 137-38). Although the corporations continued to carry on the wholesale business, they sublet most of the service stations (A. 105-06). Those stations not leased to the two corporations either were operated by Perkins<sup>5</sup> or leased to third parties

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<sup>3</sup> Prior to 1945 Perkins had been a distributor for Sunset Oil Company (Sunset), an affiliate of Tidewater Oil Company, in Southwest Washington, and for Gilmore Oil Company in Oregon. Gilmore was acquired in 1945 by Standard Oil Company of New York (Mobil) (A. 119-20).

<sup>4</sup> Petitioner brought this case on his own behalf and on behalf of the above two corporations, which had assigned to him their claims against Standard (A. 110).

<sup>5</sup> Hereafter "Perkins" and "petitioner" include Clyde A. Perkins individually and Perkins Oil Company of Oregon and Perkins Oil Company of Washington.

(A. 133-34, 167-73; Tr. 1579-80). During the claim period approximately 60 retail stations were being leased or operated by petitioner, all of which utilized the "Champion" trade name (Tr. 2925).

On December 2, 1957, Perkins went out of business as a result of the injury caused by Standard's price and price-related discriminations against him; he closed out by leasing the remnants of his enterprise to a major oil company, Union Oil Company of California (Ex. 1003).<sup>6</sup>

**(b) Standard**

Standard Oil Company of California, a billion dollar corporation, is engaged in all aspects of the gasoline and oil industry; it refines crude oil, transports and stores gasoline, and sells gasoline to wholesalers, retailers, commercial users and directly to the motoring public (Tr. 4914, 5630). During the period involved here Standard had the largest share of the Pacific Northwest gasoline market (nearly 30 percent), and it was the price leader in the area (A. 373; Tr. 481, 4940, 4945-46, 5628, 5630). Standard's principal delivery terminals in the Pacific Northwest were located at Point Wells (Richmond Beach) near Seattle and Willbridge in Portland (Ex. 280B-1, 1524). In addition to Perkins, Standard sold gasoline in the Pacific Northwest to its "Branded Dealers" (see A. 106 and fn. 2), who were retailers, and to wholesalers such as Signal Oil & Gas Company (A. 202-06, 213-15, 217-19).

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<sup>6</sup> Messrs. Powell and Harris, who conducted their businesses with that of Perkins until the end, were granted by Standard, in January 1958, a retroactive adjustment of \$40,370.00 (Ex. 23D, p. 25). Neither joined Perkins in this lawsuit, and both were made nominal defendants by the district court after Standard argued that they were indispensable parties (R. 36, 79).

(c) **Signal**

Signal Oil & Gas Company (Signal)<sup>7</sup> is a large, completely integrated producer and distributor of gasoline throughout the Western United States (A. 202-08, 413-14; Tr. 387-97, 763). Signal has been both a supplier to and customer of Standard since January 1932, when the companies entered into a contract (renewed in 1937) under which Standard agreed to purchase crude oil and natural gas from Signal and, in return, to supply Signal with its requirements of refined motor gasoline (A. 412-14).

During the 1940's Signal grew substantially in size; and by 1946 it was supplying Standard with approximately 45,000 barrels of crude oil a day (A. 413-14, 417-18; Tr. 5559). Recognizing the importance to Standard of this supply of crude, the companies began to renegotiate their contract in 1945, three years prior to its expiration date (A. 413-19).<sup>8</sup> After reaching an impasse over the price of the refined gasoline to be sold to Signal, it was agreed that on July 1, 1947, Standard would purchase Signal's marketing business and facilities, including bulk plants, commission distributors, motor equipment, retail stations and the "Signal" trademark (A. 416-17, 419-20; Tr. 754).<sup>9</sup> At Signal's insistence,

<sup>7</sup> After the trial of this case, Signal Oil & Gas Company changed its name to Signal Companies, Inc. *Moody's Industrial Manual*, p. 2126 (July 1968).

<sup>8</sup> Commenting upon the necessity for Standard to be assured of access to Signal's crude oil supply, Mr. Darwin Godfrey, the Standard executive who had negotiated both supply contracts with Signal, stated:

"[O]ur refineries were geared, of course, to that volume of crude oil. We actually had to have it to meet our commitments." [A. 413.]

<sup>9</sup> Approximately 98 percent of Signal's marketing personnel went with Standard after the acquisition (Tr. 751).



Standard reluctantly agreed also to permit Signal to re-enter the gasoline marketing business and to supply Signal with refined gasoline (A. 417-18). Substantially all of Signal's crude and natural gas production had been committed to Standard under the 1937 agreement; the same was true of the 1947 renewal (Tr. 757).

Signal began purchasing refined gasoline from Standard at its Point Wells terminal in 1955 and at its Willbridge terminal in 1956 (A. 203-04). Between 1955 and late 1957, virtually all of Signal's regular and ethyl gasoline was obtained from Standard (A. 204), and during that period Signal became one of Standard's largest purchasers in the Pacific Northwest (Ex. 23H, A. 511, 513, 518, 523). Although Signal operated as a wholesaler in the area, it did not directly own any trucks or storage facilities there (A. 231, 393). Signal transferred much of the gasoline it purchased from Standard to its subsidiary Western Hyway Oil Company (Western Hyway), and it also sold to independent jobbers (A. 205, 282).

**(d) Western Hyway**

Western Hyway, a trucking company without storage facilities in the Northwest (A. 392), was incorporated in 1950 with Signal owning 60 percent of its stock (A. 205, 392-93).<sup>10</sup> Substantially all the gasoline handled by Western Hyway during the claim period came from Signal (A. 210-11, 394), and Signal treated its transfers of gasoline to the trucking company as sales (A. 109 fn. 6, 210, 393-94; Tr. 4745). Western Hyway in turn sold that gasoline to Regal Stations Co. (Regal), its main customer in the Portland area (A. 210-11, 393-94).

<sup>10</sup> In the early 1960's Signal acquired all of Western Hyway's stock (A. 205-06).

(c) Regal

Regal was incorporated in Oregon in 1956, with Signal's subsidiary Western Hyway apparently owning 55% of its stock (A. 393). Subsequently, in October 1957, Western Hyway acquired 100 percent ownership of the company (*ibid.*). Regal operated a chain of retail stations, three of which were located in the Portland area (*ibid.*; Tr. 527-28; Ex. 1465). The Portland retail outlets were opened in October 1956, December 1956, and January 1957 (Tr. 527-28), and Regal competed with stations supplied and owned by Perkins (Tr. 644-745, 787-93, 886-907; A. 248-56, 258-60, 263-71).

In addition to Regal Stations Co., Signal "had dozens of" other Regal companies (A. 395-96), including Regal Stations, Inc. and Regal Petroleum Co., both of which operated in California (A. 206-09). The Regal corporations in California purchased gasoline directly from Signal (A. 205).<sup>11</sup>

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<sup>11</sup> There was considerable confusion within the Signal organization about the existence and identity of the various Regal companies. According to one Signal official, in 1954 Signal acquired a 75 percent interest in Regal Petroleum Co. and a 60 percent interest in Regal Stations, Inc. and also had a 60 percent interest in Regal Petroleum Corp. of Sacramento, which was merged into Regal Stations, Inc. in 1956 (A. 206-07). On the other hand, Mr. Ross Grover, the auditor for Western Hyway and all the Regal companies since their formation (A. 392, 395), stated in response to a question about a reference in Signal's 1957 annual report to Regal Petroleum Company: "[I]n 1957 there was no such organization to my knowledge. . . . It says 'Regal Petroleum Company, the retail marketing subsidiary with outlets' . . . in multiple states. I think this statement itself in that shareholders' report is in error. It should read 'The Regal Companies' because they had dozens of them" (A. 395-96).

Moreover, at least one Signal official believed that Regal Stations Co., the "Regal" involved here, was a subsidiary of Regal Stations, Inc., not Western Hyway, from 1955 through January 1958 (A. 202, 206, 209).

**(f) The Branded Dealers<sup>12</sup>**

Standard also sold gasoline directly to the independent operators of its Chevron and Signal<sup>13</sup> stations who marketed under Standard's brand names. These Branded Dealers operated numerous retail service stations in the Pacific Northwest, and they competed with petitioner's retail stations and the retail stations supplied by him (Tr. 590, 1230, 2928-29; A. 239-40).

**3. Standard's Discriminations in Their Commercial Context**

**(a) The Structure of the Pacific Northwest Market**

The following major oil companies are active in the Pacific Northwest petroleum market: Standard, Shell Oil Company, Texaco, Inc., Mobil Oil Company, Union Oil Company of California, Richfield Oil Company and Tidewater Oil Company (A. 272, 285). Of these, Standard had the largest market share and was the price leader during the claim period (Tr. 4945-46, 5628, 5630; A. 373).

The majors had almost exclusive control over the supply of petroleum products in the Pacific Northwest. All refineries in the area were owned by the majors, with the exception of one small facility operated by Time Oil Company in Tacoma, Washington, which produced only a lower-grade "house brand"

<sup>12</sup> "This is the term applied in the trade to proprietors of retail service stations whom Standard authorized to use its brand names in their advertising" (A. 106 fn. 2).

<sup>13</sup> The Signal stations were operated under the authorization of the Signal Oil Company, a subsidiary of Standard (A. 418-19). Standard's Signal Oil Company subsidiary was created out of the retail distribution system of Signal Oil & Gas Company acquired by Standard prior to this litigation (see pp. 8-9, *supra*); during the claim period it was not connected with Signal Oil & Gas Company.

gasoline (A. 137, 330). There only was one pipeline into the area during the claim period, and the evidence indicated it was owned by Standard (A. 330; Tr. 1914-15). No gasoline was brought into the area by rail (A. 331-32), and trucks were not used to transport petroleum products from the San Francisco Bay Area to the Portland-Vancouver area (Tr. 1121, 4766; A. 274).<sup>14</sup>

Most petroleum products came into the Portland-Vancouver area by marine tankers operated by the majors (A. 332). The marine terminals in Oregon and Washington during the claim period also were under the control of the majors, with the exception of one operated by Time Oil Company (A. 136, 330) and one operated by another independent which discontinued business (A. 332-34).<sup>15</sup>

Thus, there was uncontroverted evidence that the major oil companies had command over the supply of petroleum products in the Pacific Northwest in general, and the Portland-Vancouver area in particular. There also was uncontroverted evidence that the relative importance of independent gasoline jobbers in the petroleum industry declined in terms of their combined market share between 1952 and 1958 (Tr. 1148-51; A. 286)—a trend substantiated in the Pacific Northwest by Perkins' demise and the ultimate takeover of his enterprise by Union Oil Company, Sunset's sale of its retail stations to Union and the discontinuance of business by an independent terminal operator.

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<sup>14</sup> Transportation of petroleum products by truck is economically feasible only for distances under 275 miles (Tr. 1121; A. 135-36).

<sup>15</sup> At one time another independent terminal was operated by Sunset (A. 332). Sunset's service stations were acquired by Union during the claim period (Tr. 1905).



**(b) The Nature of Standard's Discriminations**

Standard sold gasoline of like grade and quality to Perkins, Signal, and its Branded Dealers from its bulk storage facilities in the Pacific Northwest (A. 107, 297-98; Tr. 1346). It is uncontested that Standard sold at lower prices to Signal than to Perkins (A. 441; Tr. 5468-69, 5575),<sup>16</sup> and there was substantial evidence from which the jury could have found that Standard also discriminated in price in favor of its Branded Dealers and against Perkins (A. 107, 213-14, 217-18, 228-29, 234-35, 247, 291, 440-41; Tr. 455-59, 4522-23, 5558-59; Ex. 343A, 343B, A. 572, 575). There also was substantial uncontroverted evidence that the Branded Dealers and other retailers purchasing Standard gasoline through Signal had received from Standard numerous other benefits (such as advertising allowances) which had not been made available to Perkins' retail stations or the retail stations supplied by him (Ex. 2, 106C, A. 493, 559; A. 213-14, 217-18, 228-29, 291; Tr. 452-59, 557-58, 629-30). The impact of these price and price-related discriminations upon Perkins' previously successful and expanding business was catastrophic: He was driven from the market within two years after Standard began supplying Signal in the Pacific North-

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<sup>16</sup> For more than two years after this case was filed, Standard denied (in its answers to the complaint and Perkins' interrogatories) any price discrimination in favor of Signal (R. 119; Ex. 23B). On the day prior to the deposition of Signal's president—and after Signal's records had been subpoenaed—Standard admitted having granted Signal rebates exceeding \$1,000,000 which it stated had previously been overlooked (Ex. 23C, 1515B). A substantial portion of those rebates was directly allocable to gasoline purchased by Signal in the Pacific Northwest (Tr. 5607, 5901; Ex. 23C).

west (Ex. 93B, 93C, A. 542, 543; Ex. 1003; A. 375-77) and accelerating its discriminations in favor of the Branded Dealers (A. 247; Tr. 630; Ex. 343A, 343B, A. 572, 575).

### (1) *The Centralia Area*

Standard began supplying Signal from its Point Wells terminal near Seattle in 1955, and Signal then entered, as a wholesaler, the Centralia market in Washington (A. 203; Tr. 252, 2451, 2988, 3392-93). One of Signal's customers, a trucker, soon began making direct sales to two independent retailers who formerly had been regular customers of Perkins (Tr. 252, 1057, 2450-51, 2681, 3081-84, 3390-95, 3455; Ex. 282C-5). In an effort to retain one of these customers, petitioner reduced his margin by more than 90 percent but still was unable to beat the trucker's price (A. 362-63). At trial it was shown that because of Signal's discriminatorily lower price from Standard, Signal was able to supply the trucker at a lower price than petitioner had paid in purchasing directly from Standard (Tr. 2696-97), thus enabling the trucker easily to take away customers from Perkins (Ex. 235, 335; Tr. 2103; A. 362-64).

Following Signal's entry into the Centralia market, a severe price war began—initiated by retail stations to which Signal had passed the benefits of Standard's price discriminations in its favor (Tr. 1341; A. 299, 304-05). In most profitable retail stations gasoline prices to the public are generally 6 cents per gallon above the so-called tank wagon or wholesale price paid by the dealer (Ex. 343B, A. 575; Tr. 4523; A. 328). During the depths of the price war in the Centralia area, however, the retail price dropped as low as 4 cents

below the tank wagon price (A. 328; Ex. 81J, K, S, T, U, 1453X, Y, AA, BB).<sup>17</sup>

During this price war Standard heavily subsidized its Branded Dealers in accordance with a sliding scale down to a fixed irreducible margin of  $3\frac{1}{2}\text{¢}$  per gallon (later raised to  $4\frac{1}{2}\text{¢}$ ), after which Standard absorbed any additional decreases in retail prices (Ex. 343A, 343B, A. 572, 575). Standard provided no comparable assistance to Perkins or the retailers supplied by him (A. 280; Tr. 997, 2925).<sup>18</sup> As a result, during the price war the Branded Dealers, who were retailers, often purchased gasoline from Standard at lower net prices than Perkins, who operated primarily as a wholesaler (Ex. 81J, K, S, T, U, 1453X, Y, AA, BB). Furthermore, during this period numerous other advantages extended to the Branded Dealers were not made available to the retail stations operated and supplied by petitioner. These advantages included use of Standard's credit card (worth  $1\frac{3}{4}\text{¢}$  per gasoline gallon) rest room and maintenance allowances (worth  $\frac{1}{4}\text{¢}$  per gallon), advertising allowances, free delivery services, free station painting, and the right to indicate they were selling major brand gasoline (worth  $2\text{¢}$  per gallon) (Tr. 791-92, 890, 965-77, 1344, 1439, 2948, 3274, 4593; Ex. 343B, A. 575; A. 218-19, 227, 285, 316-17).

<sup>17</sup> At one point during the claim period, Standard notified all division managers that retail dealers should have margins "approaching  $6\text{¢}$ , if they are to continue in business profitably" (Ex. 343B, A. 575). Another Standard official testified that no jobber could get by with less than a  $2\text{¢}$  margin (A. 365).

<sup>18</sup> To illustrate, the total amount of subsidies Perkins received for all sixty stations during the entire claim period was less than the amount paid by Standard to a single Signal dealer in Centralia during a period of less than 75 days (Tr. 554, 2925). See pp. 18-20, *infra*.

(2) *Signal, Western Hyway and Regal—  
The Portland Area*

In mid-1956 Standard also began supplying Signal from its Willbridge terminal in Portland (A. 203), and shortly thereafter three Regal stations opened in the area (Tr. 527-28). These Regal stations were supplied all their gasoline requirements by Western Hyway which had obtained Standard gasoline from Signal (A. 187, 201, 207, 210). Soon after they opened, the Regal stations dropped the price of gasoline below the generally prevailing price in the Portland area (A. 222-30; Tr. 507-13, 517-22); they also advertised that they accepted major oil company credit cards and touted their gasoline as a "Major Brand" (A. 252-53, 287-88, 318; Tr. 460-61, 728; Ex. 106C, A. 559).

Regal's entry into the Portland area broke the existing price structure and precipitated a major price war which greatly upset the entire market (Tr. 456, 518-22, 605-12, 645-64, 792, 886-985; A. 222-25, 227, 244-46, 259). Within a few days after the first Regal station opened, the retail price of gasoline in Portland dropped approximately 4¢ per gallon, approaching the tank wagon price (A. 198-99). Witnesses variously described Regal's impact as a "big blast," and a "bombshell" that "started our broke pricing" (A. 229, 259, 263-64). While there had been price disturbances in the Portland area prior to Regal's entrance, these were characterized as minor in comparison with the plummeting price structure caused by Regal (A. 263-64, 267-68). During the price war, truckers, for example, would buy just enough gasoline (e.g., 20-30 gallons instead of 100 or 120) to drive them from so-called non-depressed areas to the nearest area of depressed prices, because the savings there were so substantial (Tr. 691-706, 707-24; A. 253-55, 269-71).



The effects of the sharp price downturn precipitated by Regal were far-reaching, going beyond the diversion of business from Portland retail stations supplied by petitioner. The retail prices in close-by Vancouver immediately experienced a severe downward reaction (A. 259, 266-67, 298-99). Moreover, the price decline in Portland-Vancouver area soon spread throughout much of the Pacific Northwest (A. 266-69). Petitioner, in sum, introduced substantial evidence to prove that the price and price-related discriminations, which Signal received from Standard and passed on to its subsidiary, Western Hyway, and then to Regal, Western Hyway's subsidiary, enabled Regal to upset competitive conditions throughout the market (Tr. 519, 956-57, 985; A. 189-90, 223-24, 226-30, 245, 249, 258-60, 263-64, 266-68, 270-71). As the court of appeals observed in describing this situation (A. 108-09 fn. 6):

"Regal commenced to retail gasoline and oil in Portland during the summer of 1956 and soon was operating a number of service stations there. It accompanied a well publicized entry into the market with a scale of prices well below that of other retailers and persisted in undercutting other retailers. Perkins took the position, which he supported with substantial evidence, that 'While there had been some price disturbances in the Portland area prior to Regal, these were . . . of "brush fire" dimensions while Regal precipitated a major conflagration'; and he further adduced proof tending to show that the impact of Regal's price policy went far beyond Portland; that it precipitated and sustained a sort of chain-reaction throughout Perkins' entire marketing area, and that it adversely affected both the wholesale and retail business carried on by Perkins."

In recognition of the seriousness and far-reaching impact of the Regal price war, Standard subsidized Branded Dealers located many miles distant from Portland, in order to enable them to respond to the sharp price downturn (Tr. 629-30; A. 247-48, 288-89; Ex. 343B, A. 575). Again, no comparable price or price-related assistance was made available to Perkins (Tr. 997; A. 280). On the contrary, Standard resolutely prohibited Perkins from giving any indication that his products came from a major oil company (Tr. 147, 1427-28) despite Perkins' repeated requests to do so (A. 287-89). In addition, Perkins was precluded by Standard from honoring the majors' credit cards (Tr. 1903; A. 288-89).

**(c) Standard's Awareness of Perkins' Plight**

During the claim period Perkins repeatedly requested assistance from Standard and notified Standard of the deteriorating price structure in his area. For example, Perkins sent a letter to Standard, dated April 29, 1955, notifying it that Signal stations in Centralia were advertising regular gasoline at 26.4¢ per gallon, in contrast to a tank wagon price of 26.5¢. The letter noted that the Perkins distributor in the area, Carter Oil Company, currently was selling at 27.9¢, but would have to drop to 26.4¢ shortly. (Ex. 63; Tr. 2907-08.)

Prior to signing a 1956 supply contract with Standard, Perkins went to Los Angeles and attempted to open negotiations with several oil companies including Signal (A. 185-86). Signal offered Perkins prices lower by  $\frac{3}{4}$ ¢ on regular gasoline and  $\frac{1}{2}$ ¢ on ethyl than those offered him by Standard (*ibid.*). When Perkins informed Standard officials of Signal's offer, they de-

nied that Signal was getting a better price and refused to increase Perkins' margin (A. 188, 192-95).

Perkins later discussed this matter with Mr. August Johnsen, President of S.O. Company, a Standard subsidiary, Mr. E. J. McClanahan, Vice-President of Standard, Mr. Howard Cuyler, General Sales Manager of Standard, Mr. Howard Vesper, Executive Vice-President in charge of Standard's Western marketing, and Mr. George Hargens, another Standard executive (A. 289). It was admitted during one of these discussions that Signal was paying Standard a lower price than was Perkins (A. 188-89).<sup>19</sup>

In the latter part of 1956, Perkins again requested subsidies equivalent to those provided Standard's Signal stations (A. 290-91). Mr. Vesper again denied that Standard gave any subsidies (A. 192), and he claimed Perkins' prices were identical to those paid by Signal (A. 193). Perkins' pleas and Standard's denials of the price and price-related discriminations against him continued for a substantial period of time (A. 194-97). Thus, in the spring of 1957, Perkins had another meeting with Standard's officers in San Francisco

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<sup>19</sup> Acknowledgment of Signal's lower price came during an argument between Johnsen and Hargens about Regal's entrance into the Pacific Northwest. Johnsen admonished Hargens (A. 189):

" 'You have the authority to do it and I want you to stop Regal from going to the Northwest because, if they do, they will wreck that market because they have got a better price than either Clyde [Perkins] or my other jobbers have up there, and if they come up there, they will do the same thing there they have done other places. They will wreck that market.' "

Continuing, Johnsen added: " 'You [Hargens] can control this because you are selling the Signal Oil & Gas and they furnish, and they own Regal or furnish the gas for Regal.' " Hargens responded: " 'Yes, I know it, but ... I can't control it.' " (A. 201.)

where he explained that he "couldn't live under the present circumstances," and that Standard would have to help him (A. 291-92).

In the summer of 1957 Perkins met once more with Standard officials in San Francisco; at that time Mr. August Johnsen reiterated his previous admission of the existence of subsidies to Perkins' competitors (see fn. 19, p. 19, *supra*), and he told Perkins he would attempt to help (A. 294, 296-97). As a result, petitioner received a small subsidy in the fall of 1957 (Tr. 1264-66; A. 296-97)—shortly before he went out of business.

**(d) The Adverse Impact of Standard's Discriminations**

All aspects of petitioner's business were drastically affected by Standard's price and price-related discriminations in favor of Signal and its Branded Dealers in the Pacific Northwest. Prior to 1955 petitioner had enjoyed growth and financial success (A. 146). After Standard began discriminating in favor of Signal and its Branded Dealers, Perkins' gasoline volume decreased by 13 percent between 1955 and 1957. And he suffered net losses in each of those years. (Ex. 239, 283A; Ex. 93B, 93D, 284A, 284B, A. 542, 544, 563; A. 146, 151-52, 374) During the entire claim period Perkins' gross profit per gallon of gasoline was 1.54 cents (Tr. 3653-54).

No less dramatic was the decline in petitioner's fuel oil sales and income from his leased stations (Ex. 82G-1; Ex. 82G-2, A. 534; Tr. 820, 936). For example, petitioner sold approximately 4.4 million gallons of fuel oil in 1955, 3.6 million gallons in 1956 and only 2.4 million gallons in 1957 (Ex. 93C, A. 543; A. 375-76).



The record contains substantial evidence that these declines in Perkins' business fortunes were caused by Standard's price discriminations in favor of Signal and its Branded Dealers, which not only occasioned many persons to cease purchasing gasoline from customers of Perkins but also forced many of Perkins' customers to obtain gasoline from other suppliers (Tr. 588, 667-68, 691-95, 726-27, 734-35, 797, 3101-02; A. 239-40, 249, 252-56, 260; Ex. 349). And there was testimony before the jury that once a customer was lost for gasoline purchases, he also was lost as a fuel oil customer (Tr. 3074-79, 3572; A.370).

In marked contrast to Perkins' decline, Signal's business boomed. Its purchases from Standard in the Pacific Northwest jumped from 5,605,000 gallons in 1955 to 8,340,000 gallons in 1957—an increase of over 48 percent (Ex. 23H, A. 523).

Despite the competitive disadvantage at which Standard's policy of discrimination had placed Perkins, for over two years he struggled to continue as a viable independent distributor of gasoline. By December 1957, however, Standard's predatory discriminations had taken their toll. Perkins was forced to lease to a major oil company the remnants of a business it had taken 30 years to build—and one of the largest independent distributors of gasoline was effectively eliminated from the Pacific Northwest market (Ex. 1003).

#### 4. The Judgments Below

After hearing this evidence and being properly instructed by the trial judge, the jury returned a verdict in favor of petitioner, assessing actual damages in the

amount of \$336,404.57 (A. 101).<sup>20</sup> Pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, the trial judge trebled the jury award, and, after a separate hearing, awarded attorney's fees in the amount of \$289,000 for a total judgment against Standard of \$1,298,213.71 (A. 105).

The court of appeals reversed and remanded the case for a new trial. With respect to Standard's price and price-related discriminations in favor of its Branded Dealers, the court apparently agreed with Perkins that Standard had violated Sections 2(a), (d) and (e) of the Clayton Act, and that petitioner was entitled to recover damages caused by those discriminations (A. 107, 111-12). As to Standard's price discriminations in favor of Signal—which sold to retailers directly as well as through Western Hyway—the court ruled that because an indeterminate part of the damages assessed against Standard “necessarily” rested upon the marketing activities of Regal, a customer of Western Hyway, the entire jury verdict must be set aside (A. 108, 109). The Ninth Circuit reasoned that although the evidence proved that the impact of Regal's price cutting—supported by Standard's price

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<sup>20</sup> The above sum, denominated “general verdict,” was divided by the jury into three parts, each labeled “special verdict,” as follows (A. 105 fn. 1):

- |   |                |
|---|----------------|
| “(1) ... on the first cause of action of<br>Clyde Perkins individually        | \$185,022.52   |
| “(2) on plaintiff's second cause of action of<br>Perkins Oil Co. of Oregon    | 84,101.14      |
| “(3) on plaintiff's third cause of action of<br>Perkins Oil Co. of Washington | 67,280.91[.]’” |

discriminations in favor of Signal—"adversely affected both the wholesale and retail business carried on by Perkins" (A. 109 fn. 6), Section 2(a) of the Clayton Act, as a matter of law—

"does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard." [A. 116.]

On the issue of damages, the court ruled that, as to Perkins' individual claim (see fn. 20, p. 22, *supra*), the trial judge properly permitted him to show "that the going concern value of his interest, as owner and lessor and as prime lessee and sublessee of service stations and bulk plants, substantially diminished" (A. 113). The court stated, however, that the trial judge had erred in admitting Perkins' evidence that, as a result of Standard's discriminatory practices, his two corporations defaulted on brokerage fees, rentals and other debts owed him, and that he was unable to collect rentals on service stations leased to independent operators (A. 113). Viewing Perkins as a third-party bystander, the court held: "[T]he rule is that one who is only *incidentally* injured by the violation of the antitrust laws—the bystander who was hit but not aimed at—cannot recover against the violator" (*ibid.*, emphasis in original).<sup>21</sup>

Finally, the court criticized an evidentiary ruling and a jury instruction by the trial judge, both involving Standard's meeting competition defense under Section

<sup>21</sup> This ruling did not affect the damage claims of the two Perkins corporations (see A. 112).

2(b) of the Clayton Act, 15 U.S.C. § 13(b).<sup>22</sup> And it rejected Standard's argument that there had been reversible error involving Perkins' claims that Standard unlawfully discriminated against him by not making available to him payments, services, and facilities granted his competitors: "Neither did the court err in submitting to the jury Perkins' claims based upon Standard's alleged Section 2(d) and 2(e) violations" (A. 111). See also, in this regard, the court's opinion on petition for rehearing (A. 103).

## SUMMARY OF ARGUMENT

### I.

Section 2(a) of the Clayton Act contains two distinct tests of illegality. The first, the standard of the original Section 2 of the 1914 Clayton Act, prohibits price discriminations whose effect may be substantially to lessen competition in any line of commerce. The second, the standard of the 1936 Robinson-Patman amendments, prohibits price discriminations which injure, destroy or prevent competition with (a) the discriminating supplier (primary line injury), (b) the favored purchaser (secondary line), and (c) the customers of the favored purchaser (tertiary line).

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<sup>22</sup> The Ninth Circuit stated, first, that Standard's evidentiary offer of sales records from a competitor's files, dated several months after Standard's price reduction, should have been accepted "despite its *ex post facto* nature" (A. 116). Secondly, it stated that, "standing alone," part of the trial judge's instruction on the meeting competition issue was clearly erroneous (A. 117). The court went on to observe, however, that that instruction did not stand alone, since the trial court also gave an instruction, requested by Standard, which correctly stated the rule" (A. 117 fn. 10).



In the present case, Standard sold gasoline to petitioner, a gasoline wholesaler and retailer, at prices higher than those charged a competing wholesaler (Signal) and competing retailers, causing the destruction of petitioner's business. The jury awarded petitioner over \$330,000 in damages. A portion of the damages assessed against Standard was predicated upon the retail marketing activities of Regal, a purchaser of Standard gasoline from Western Hyway (Regal's parent corporation), which had previously purchased the gasoline from Signal (Western Hyway's parent). The Ninth Circuit, impressed with the form of the Signal-Western Hyway-Regal distributive chain, set aside the entire jury verdict on the ground that petitioner's damages suffered as a result of Regal's activities occurred at the fourth level of distribution and therefore were too remote to be cognizable under Section 2(a).

## II.

A. Assuming *arguendo* that this case involves so-called "fourth line" injury not cognizable under the Robinson-Patman amendments, the court of appeals erred in imposing an artificial limitation on the scope of the "substantially to lessen competition . . . in any line of commerce" standard of Section 2(a). That standard, which was part of the original Section 2 of the Clayton Act, contains no functional level limitations; all it requires is proof that, as a result of the challenged price discriminations, there may be a substantial lessening of competition in any significant product and geographic market.

This Court's decision in *George Van Camp & Sons Co. v. American Can Co.*, 278 U.S. 245 (1929), a pre-

Robinson-Patman Act case, strongly supports the jury verdict against Standard. There, the Court flatly rejected the defendant's contention that the "in any line of commerce" language of the original Section 2 of the Clayton Act "must be confined to the particular line of commerce in which the discriminator is engaged," stating:

"The phrase is comprehensive, and means that if the forbidden effect or tendency is produced in *one* out of *all* the various lines of commerce, the words 'in *any* line of commerce' literally are satisfied." [278 U.S., at 253.]

Thus, it is clear that the phrase "in any line of commerce" means exactly what it says—that a price discrimination causing the requisite competitive injury is unlawful regardless of the functional level in the favored purchaser's chain of distribution at which the competitive harm is first felt.

Moreover, the above interpretation of the "in any line of commerce" language of Section 2(a) accords with the uniform judicial interpretation of the same language in Sections 3 and 7 of the Clayton Act. The consistent decisions of this Court teach that commercial realities rather than arbitrary functional levels should be the standard for defining lines of commerce under all Sections of the Clayton Act.

B. On the facts of this case there can be no question that the jury properly could have concluded that the retailing and wholesaling of gasoline in the Pacific Northwest was a proper line of commerce in which to appraise the impact of Standard's price discriminations. Perkins was engaged in the wholesaling and retailing of gasoline only in the Pacific Northwest; that

also was the area in which he purchased his gasoline supplies; and the deteriorating price structure which caused his destruction was caused by Standard's discriminations in favor of his competitors in that area.

The jury likewise could properly have concluded that competition in this commercially significant product and geographic market was substantially lessened when Perkins—one of the area's largest independents—was driven out of business and supplanted by one of the major oil companies. This is particularly true since the price discriminations which caused his demise were granted by Standard—the most powerful supplier in the Pacific Northwest, furnishing nearly 30 percent of the area's gasoline gallonage; the price discriminations were continued for over 2½ years until Perkins went out of business; and they were granted in circumstances where Standard had every reason to know that Signal would pass along to Regal those discriminatory price advantages in order to injure Perkins.

C. The 1936 Robinson-Patman amendments to Section 2 of the Clayton Act, relied upon by the Ninth Circuit, did not alter the original Section 2 prohibition of price discriminations causing a substantial lessening of competition in any commercially significant market. Indeed, the legislative history of those amendments makes clear that Congress intended the original prohibition to remain in full force. To impose the functional level limitations of the Robinson-Patman amendments upon the original Section 2 test of illegality would reduce the latter to mere surplusage, in direct contravention of the intent of Congress to strengthen the Clayton Act provisions, not weaken them.

## III.

Independent of the Ninth Circuit's error in holding that Section 2 of the Clayton Act has no applicability in so-called fourth line injury cases, the court fundamentally misconceived the nature of this case in failing to recognize that it involved second line injury. The trial court properly submitted to the jury the question whether Signal and Perkins, both of whom purchased from Standard, were competitors. And the evidence established that each purchased gasoline directly from Standard; each wholesaled its gasoline in the Pacific Northwest; and the retailers of each actively competed for the patronage of the motoring public.

Both Congress, in passing the Robinson-Patman Act, and the courts, in interpreting it, have recognized that a wholesaler's success depends in large part upon the success of the retailers to which it sells, and that the competition among retailers is, in practical effect, competition between the wholesalers serving them. On the facts of this case, the jury properly could have found that Signal and Perkins were competitors within the meaning of the Robinson-Patman Act, and the verdict should have been permitted to stand on that ground.

## IV.

The Ninth Circuit erred in ruling that the actions of Western Hyway (Signal's subsidiary) and Regal (Western Hyway's subsidiary) were not attributable to Signal because Signal did not exercise its power to control those firms. Whether a parent corporation controls the operations of its subsidiaries is a factual



question, and the record contains evidence from which the jury properly could have inferred that Signal did, in fact, control Western Hyway and Regal to the extent necessary to accomplish Perkins' destruction. For example, both Signal and Standard treated Western Hyway's separate corporate identity as a mere fiction when business reasons made it convenient to do so—treating a competing oil company's offer of a reduced price to Western Hyway as an offer directly to Signal.

The underlying issue on this aspect of the case is whether a favored buyer can immunize a seller who grants price discriminations in its favor from the proscriptions of Section 2(a) through the manipulation and utilization of subsidiaries. With Standard's knowledge of the likely consequences, Signal used Standard's price advantages to support Regal's price-cutting activities, causing Perkins' demise. Therefore, Standard should not be able to escape liability for its price discriminations merely because Signal did not exercise in all other respects its power to control the operations of Regal. While the requirement of such extensive exercise of control may be appropriate in assessing liability once a violation has been found for which someone is held responsible, it should not be permitted to enable a corporation to use subsidiaries to circumvent the basic strictures of a statute.

## V.

A ruling in favor of petitioner on any of the grounds discussed in Points II, III and IV above would require reinstatement of the jury verdict to the extent that the Ninth Circuit's holding denied recovery for damages attributable to the activities of Regal. In

addition, the Ninth Circuit erred in ruling that certain evidence of the injury suffered by Perkins individually as a result of Standard's discriminations was improperly considered by the jury as an element of damages.

This Court consistently has recognized that, while a jury's award in a treble damage action cannot be based upon speculation or conjecture, an appellate court should not set aside a damage award predicated upon data which allows the jury, as a matter of reasonable inference, to assess the probable loss inflicted by the antitrust violation. The record below contained substantial evidence upon which the jury could have predicated a reasonable assessment of the damages incurred by Perkins.

Perkins' evidence of lost brokerage and rental income, criticized by the Ninth Circuit, was introduced in an attempt to provide a full picture of the legal injury incurred by Clyde Perkins individually as a result of Standard's discriminatory conduct. And this Court has long recognized the distinction between the fact of damage—legal injury—and the extent of damages in private antitrust cases. Moreover, that evidence was not presented to the jury for damage calculation purposes. The trial court specifically delineated the elements which the jury could consider in assessing damages and never once referred in its charge to the evidence cited by the court of appeals. Therefore, the evidence referred to by the Ninth Circuit could not have been involved in the jury's award of damages to Clyde Perkins individually.

## A R G U M E N T

## I

## INTRODUCTION

A. Petitioner Clyde A. Perkins, starting in 1928 as the operator of a single service station, by 1955 had become one of the largest independent gasoline wholesalers and retailers servicing the Pacific Northwest market. Perkins was driven out of business when Standard—for a period of two and one-half years, from March 1955 until the end of 1957—sold gasoline at discriminatorily lower prices to a large competing wholesaler (Signal Oil & Gas Company) and retail competitors (Standard's Branded Dealers), and also provided his competitors with discriminatory services, facilities and payments. The jury, after a long trial and two days of deliberations, found that Standard's price and price-related discriminations against Perkins had violated Sections 2(a), 2(d) and 2(e) of the amended Clayton Act, and it awarded him over \$330,000 in actual damages.

The Ninth Circuit set aside the entire jury verdict. So far as the Branded Dealers were concerned, the court apparently agreed that the jury properly could have found that Standard's price discriminations in their favor violated Section 2(a), and it ruled that, as to the price-related discriminations, "[n]either did the [district] court err in submitting to the jury Perkins' claims based upon Standard's alleged Section 2(d) and

2(e) violations" (A. 107, 111).<sup>23</sup> However, considering Standard's price discriminations in favor of Signal, the court ruled as a matter of law that they were immune from challenge under Section 2(a) of the Clayton Act, insofar as some of Perkins' damages resulting therefrom were attributable to activities of Regal. Therefore, the entire verdict was deemed tainted and was set aside (A. 108-09).

In reaching that result, the court made no mention of the Act's purpose to prevent large buyers from gaining discriminatory price advantages over their smaller rivals, making them begin the competitive struggle from behind. Nor did the court assign any weight to the fact that Standard's price discriminations had caused a substantial lessening of competition in the Pacific Northwest wholesale and retail gasoline markets, driving out of business one of the area's largest independents. Rather, impressed with the form of the transaction, the court ruled that the verdict in favor of Perkins must be set aside solely because one of the favored purchasers (Signal) did not resell the gasoline directly to its retail customers (Regal), but instead resold to one of its subsidiaries (Western Hyway) which,

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<sup>23</sup> The principal substantive portion of the Ninth Circuit's opinion dealing with Perkins' claim involving Standard's Branded Dealers reads as follows in its entirety (A. 107):

"The Branded Dealers purchased gasoline and oil from Standard which they in turn sold at retail. With respect to them, Perkins' story is quickly told. Because of Standard's favoritism and discrimination they were able to and did offer lower prices and better services and facilities than Perkins in marketing at retail."



in turn, resold to one of its subsidiaries, the Regal retail outlets. The court reasoned that—

“Section 2(a) of the Act does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard.” [A, 116.]

The decision of the Ninth Circuit exalts form at the expense of economic reality and, contrary to the purpose of the Clayton Act, imposes an artificial limitation on the power of Section 2(a) to prevent price discriminations which tend “substantially to lessen competition . . . in any line of commerce.” Moreover, by basing that limitation exclusively on the number of persons in the distributive chain established by the favored purchaser, the decision, unless reversed, will enable large, powerful buyers virtually to insure statutory immunity to suppliers which grant them favorable price concessions. The ease with which the court's ruling could be utilized to subvert the purposes of Section 2(a) is well illustrated by the facts of this case where both companies in Signal's chain of distribution were part of the Signal corporate family.<sup>24</sup>

If Section 2 of the Clayton Act is to perform its primary function of enabling all rivals to enter into competition on relatively equal terms, it is critically important that large buyers (and sellers) be denied this

<sup>24</sup> Operation through subsidiaries is common in the petroleum industry (Tr. 3169, 4780, 4954). Standard presently has over 100 subsidiaries; Signal has more than 45. *Moody's Industrial Manual*, pp. 2126-27, 2496-98 (July 1968).

easy means of avoiding its impact.<sup>25</sup> This is particularly true in the petroleum industry where the independents have long been in weak competitive positions and are constantly losing more ground to the majors. See generally, The Federal Trade Commission's *Report on Anticompetitive Practices in the Marketing of Gasoline* (June 1967). As Chairman Dixon of the Commission has colorfully characterized the problem—

“the ‘independent’—including the independent refiner, the independent jobber, and the independent retailer—has, as the saying goes, one foot in the grave and the other on a banana peel.” [Quoted in Wilson, *Recent Developments Affecting Independent Businessmen in the Oil Industry*, 9 Antit. Bull. 559, 562 (1964).]

B. Section 2(a) of the Clayton Act as it presently stands is a composite of two statutory enactments. The first, Section 2 of the 1914 Clayton Act, prohibits price discriminations whose effect may be “substantially to lessen competition . . . in any line of commerce.” 38 Stat. 730. The second enactment, the 1936 Robinson-Patman amendments to the original Section 2, left intact the above quoted standard of

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<sup>25</sup> See, in this connection, *Stanton v. Texaco, Inc.*, 1968 Trade Cases ¶ 72,595 (D.R.I. 1968), where the defendant argued, on motion for summary judgment, that the plaintiff-retailer's complaint, which alleged that Texaco had unlawfully discriminated against it by granting a lower price to competing retailers, should be dismissed because the defendant's gasoline, before being distributed to the competing retailers, was first sold to a wholesaler. The court denied the motion, stating, among other things, that the relationship between Texaco and its wholesaler should be explored at trial. (*Id.*, at pp. 86,077-78.)

illegality. 49 Stat. 1526.<sup>26</sup> The Robinson-Patman amendments altered the original Section 2 in ways not relevant here, and, in addition, added to the statute another substantive standard of illegality, prohibiting price discriminations which injure, destroy or prevent competition with the discriminating supplier (primary line injury), the favored purchaser (secondary line), and the customer of the favored purchaser (tertiary line).

We demonstrate below that the Ninth Circuit's decision is erroneous both under the original Section 2 standard (Point II, pp. 36-58, *infra*) and the Robinson-Patman amendments (Points III and IV, pp. 58-68, *infra*). Each of these three points constitutes a sufficient independent basis for upholding the jury verdict. And it has long been settled that an appellate court should not set aside a jury verdict if there is substantial evidence to support any legally cognizable claim submitted to the jury. *E.g., Cross v. Ryan*, 124 F. 2d 883, 887 (7th Cir.), *cert. denied*, 316 U.S. 682 (1942).

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<sup>26</sup> The Robinson-Patman Act merely changed a split infinitive ("to substantially lessen") in the original Section 2 language into the present wording ("substantially to lessen"). 49 Stat. 1526.

## II.

**THE JURY PROPERLY COULD HAVE RETURNED A VERDICT AGAINST STANDARD ON THE GROUND THAT THE EFFECT OF ITS PRICE DISCRIMINATIONS IN FAVOR OF SIGNAL MAY BE SUBSTANTIALLY TO LESSEN COMPETITION IN THE PACIFIC NORTHWEST WHOLESALE AND RETAIL GASOLINE MARKET.**

Any price discrimination covered by Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act,<sup>27</sup> is prohibited if its effect may be—

“[a] substantially to lessen competition or to tend to create a monopoly in any line of commerce

or

“[b] to injure, destroy, or prevent competition with any person

“[1] who either grants or

“[2] knowingly receives the benefit of such discrimination, or

“[3] with customers of either of them.”

The statute thus contains two distinct and independent tests of illegality. The first, [a] above, the original Section 2 standard which has been part of the Clayton Act since its passage in 1914, focuses on the overall “line of commerce” in which the competitive injury is felt. The second, [b] above, the 1936 Robinson-Patman amendments, focuses on the specific competitors injured by the price discrimination. See generally, Edwards, *The Price Discrimination Law* 5-13 (1959);

<sup>27</sup> There are no questions in this case that both Perkins and Signal were “purchasers” from Standard; that they purchased gasoline “of like grade and quality”; and that the pertinent transactions occurred “in commerce” (A. 42-44).



*Austin, Price Discrimination and Related Problems Under the Robinson-Patman Act 1-11 (1959).*

The Ninth Circuit, in the decision below, completely ignored the original Clayton Act standard;<sup>28</sup> it discussed only the language of the Robinson-Patman amendments. The district court, on the other hand, had correctly charged the jury that it could return a verdict against Standard if it found that the effect of Standard's price discriminations "may have been to substantially lessen competition . . . in any line of commerce. . ." (e.g., A. 53-54).<sup>29</sup> The court of appeals erred in failing to uphold the jury verdict on that ground.

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<sup>28</sup> Indeed, Section 2(a) as set forth in the court's opinion omitted entirely the "in any line of commerce" language (see A. 107 fn. 3).

<sup>29</sup> Both Perkins and Standard, in their requested instructions, covered the question whether Standard's price discriminations had violated the original Section 2 standard. Thus, Standard proposed the following charge:

"In order for plaintiff Clyde Perkins to prove that defendant Standard has discriminated in price in violation of Section 2(a) of the Clayton Act, he must prove not only that Standard sold gasoline of the same type to different purchasers at different prices but further that the effect of these price differences *may have been to substantially lessen competition or to tend to create a monopoly in any line of commerce* or to injure, destroy or prevent competition with Standard or with the favored purchaser from Standard, or with the customers of either of them." [Defendant's Requested Instructions, No. 51, emphasis added.]

To the same effect is Plaintiff's Proposed Instructions, No. 7.

**A. SECTION 2(a) OF THE CLAYTON ACT PROHIBITS ALL PRICE DISCRIMINATIONS WHOSE EFFECT MAY BE SUBSTANTIALLY TO LESSEN COMPETITION IN A COMMERCIALY SIGNIFICANT PRODUCT AND GEOGRAPHIC MARKET, REGARDLESS OF THE FUNCTIONAL LEVEL AT WHICH THE ANTICOMPETITIVE IMPACT IS FIRST FELT.**

**(1) The Van Camp Decision and the Plain Meaning of the "In Any Line of Commerce" Language of Section 2(a)**

While the Court has never decided this precise issue, its ruling in *George Van Camp & Sons Co. v. American Can Co.*, 278 U.S. 245 (1929), rendered prior to the Robinson-Patman amendments, strongly supports the jury verdict against Standard. In *Van Camp*, a purchaser from the defendant sued to enjoin price discriminations against it in violation of the original Section 2 of the Clayton Act. The defendant argued that its price discriminations could not be challenged by a purchaser because the statutory words "in any line of commerce" "must be confined to the particular line of commerce in which the discriminator is engaged, and that they do not include a different line of commerce in which purchasers from the discriminator are engaged in competition with one another." 278 U.S., at 253.

This Court flatly rejected that argument, ruling that the action came—

"within the terms of the statute, unless the words 'in any line of commerce' are to be given a narrower meaning than a literal reading of them conveys. The phrase is comprehensive, and means that if the forbidden effect or tendency is produced in one out of all the various lines of commerce, the words 'in any line of commerce' literally are satisfied." [*Ibid.*, emphasis in original.]

Continuing, the Court observed that adoption of the defendant's argument would lead to a result at variance with "[t]he fundamental policy of the legislation"—

*"that, in respect of persons engaged in the same line of interstate commerce, competition is desirable and that whatever substantially lessens it or tends to create a monopoly in such line of commerce is an evil. Offense against this policy, by a discrimination in prices exacted by the seller from different purchasers of similar goods, is no less clear when it produces the evil in respect of the line of commerce in which they are engaged than when it produces the evil in respect of the line of commerce in which the seller is engaged. In either case, a restraint is put upon 'the freedom of competition in the channels of interstate trade which it has been the purpose of all the anti-trust acts to maintain.'"* [*Id.*, at 254, emphasis added.]

The thrust of *Van Camp* is clear. The phrase "in any line of commerce" means what it says: that a price discrimination is unlawful if it tends to cause substantial competitive harm in any commercially meaningful product and geographic market—in any one of the many "'channels of interstate trade'" (*id.*, at 254)—regardless of the functional level or point in the favored purchaser's chain of distribution at which that harm is first felt.

The broad language of *Van Camp* itself demonstrates that the Court was not limiting its holding to the precise facts of the case before it, *i.e.*, that the original Section 2 prevents a lessening of the competition faced by the discriminator's favored purchaser—competition which, in the subsequent Robinson-Patman lexicon, has become known as second line. The Court's treatment

of the authorities relied upon by the defendant confirms the comprehensive scope of its decision.

In the *Van Camp* opinion the Court addressed itself to the contention that defendant's proposed reading of the statute had been adopted by the Second Circuit in *Mennen Co. v. Federal Trade Commission*, 288 Fed. 774, cert. denied, 262 U.S. 759 (1923). Refusing to adopt the defendant's contention the Court categorically rejected as "unsound" the *Mennen* analysis (278 U.S., at 254):

"The decision in that case was based upon the premise that the statute was ambiguous and required the aid of committee reports, etc., to determine its meaning, a premise which we have rejected as unsound."

Had the Court in *Van Camp* rendered a more narrow decision than the language of its opinion would indicate—a decision limited to so-called second line competitive injury—it easily could have distinguished *Mennen* on the facts and need not have categorically repudiated it. For *Mennen* was what has come to be known as a third line case, one involving sales at discriminatorily lower prices to wholesalers than to direct-buying retailers who competed with the retail customers of the favored wholesalers.<sup>30</sup>

This Court's treatment of *Mennen*, read in conjunction with the unequivocal language of its opinion,

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<sup>30</sup> "What the Mennen Company has done was to allow 'wholesalers' who purchased a fixed quantity of their products a certain rate of discounts, while to the 'retailers' who purchased the same quantities it denied the discount rates allowed to the 'wholesalers' " (288 Fed., at 779).



can only mean that the Court was rejecting, in the broadest possible terms, the concept that the competition protected by the original Section 2 is restricted to competition occurring at any predetermined point in the favored purchaser's chain of distribution. As two eminent commentators on price discrimination problems have observed in analyzing *Van Camp*, "[s]ubsequent to this decision the statute applied to all discriminations that had the prohibited anticompetitive effect, no matter where that effect became apparent" (Edwards, *The Price Discrimination Law* 7 (1959)); for, "[i]n using the term 'line of commerce' Congress evidently was referring to lines of goods rather than levels of competition" (Austin, *Price Discrimination and Related Problems Under the Robinson-Patman Act* 7 (1959) (emphasis added)).<sup>21</sup>

**(2) The Parallel Judicial Interpretation of the Same Language in Sections 3 and 7 of the Clayton Act**

The above interpretation of the "in any line of commerce" language not only accords with the objectives of Section 2 of the Clayton Act as articulated in *Van Camp*, *supra*; it also is consistent with the uniform judicial interpretation of the same language in Section

<sup>21</sup> To the same effect are the pre-Robinson-Patman Act cases and Federal Trade Commission opinions which analyze price discriminations challenged under the original Section 2 without any mention of functional levels of competition. *E.g.*, *Sidney Morris & Co. v. National Ass'n of Stationers*, 40 F. 2d 620 (7th Cir. 1930); *Porto Rican American Tobacco Co. v. American Tobacco Co.*, 30 F. 2d 234 (2d Cir.), *cert. denied*, 279 U.S. 858 (1929); *Pittsburgh Coal Co.*, 8 F.T.C. 480, 514 (1925); *South Bend Bait Co.*, 4 F.T.C. 355, 360 (1922).

3 and Section 7 of the Act,<sup>22</sup> as the legislative history of the Act and the 1950 amendments thereto indicate Congress intended. Indeed, in the landmark decision in the *duPont-General Motors* case, *United States v. duPont & Co.*, 353 U.S. 586 (1957), this Court expressly relied upon *Van Camp* as support for its ruling that appraisal of the pertinent line of commerce in a Section 7 merger action cannot be limited by *a priori* rules of inclusion and exclusion.

The Court in *duPont* was writing on a relatively clean slate insofar as Section 7 itself was concerned. In ascertaining the meaning of that Section, it looked to the standards developed in previous decisions under Sections 2 and 3 of the Act. Hence, in determining the definitional standard for the relevant market in which to appraise the anticompetitive impact of the stock acquisition there involved, the Court noted (353 U.S., at 593) that the "threatened monopoly must be one which will substantially lessen competition 'within the area of effective competition,'" quoting *Standard Oil Co. v. United States*, 337 U.S. 293, 299 fn. 5 (1949), a Section 3 case.

Further, considering whether the relevant area of effective competition had to include duPont's sales of finishes and fabrics for all uses (including automotive

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<sup>22</sup> Section 3, 15 U.S.C. § 14, prohibits tying, exclusive dealing and other arrangements whose "effect . . . may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Section 7, 15 U.S.C. § 18, prohibits any acquisition "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

uses), the Court quoted *Van Camp, supra*, 278 U.S., at 253, to the effect that—

“if the forbidden effect or tendency is produced in one out of all the various lines of commerce, the words ‘in any line of commerce’ literally are satisfied.” [*Id.*, at 594 fn. 13.]

And it went on to hold that economic realities limited the relevant market to fabrics and finishes sold for automotive uses. *Id.*, at 594-95. Finally, employing the same approach in interpreting the meaning of Section 7’s standard of illegality, the Court noted (*id.*, at 595) that “[t]he market affected must be substantial,” and it must be shown that “competition may be foreclosed in a substantial share of . . . [that market],” again relying upon *Standard Oil, supra*, 337 U.S., at 314, and an earlier Section 3 case, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U.S. 346, 357 (1922).

Six years after the *duPont* decision, in *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321 (1963), the Court undertook to establish a test of *prima facie* illegality for Section 7 actions. Faced again with a relatively clean slate under that Section, the Court once more turned to Section 3 cases for guidance. And it emphasized that the House Report on the 1950 Celler-Kefauver amendments to Section 7 had stated (374 U.S., at 365)—

“that the tests of illegality under amended § 7 ‘are intended to be similar to those which the courts have applied in interpreting the same language as used in other sections of the Clayton Act.’ H.R. Rep. No. 1191, 81st Cong., 1st Sess. 8. Accordingly, we have relied upon decisions under these other sections in applying § 7. See *Brown Shoe Co. v. United States*, [370 U.S. 294]; cf.

*United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 595, and n. 15[;] . . . *Standard Oil Co. v. United States*, 337 U.S. 293, cited in S. Rep. No. 1775, 81st Cong., 2d Sess. 6. . . .”

The House and Senate Reports cited in the above quotation from *Philadelphia Nat'l Bank* echo the sentiments of the 1914 Congress which passed the original Clayton Act. For example, Representative Floyd of Arkansas declared that in conference the “line of commerce” language had been inserted in all three sections of the bill to make them “in harmony now . . . the same principle being applied to each one of them” (51 Cong. Rec. 16318) (1914)).

It is important to stress, finally, that the sole purpose of defining a line of commerce is to provide a commercially meaningful context for appraisal of the anticompetitive impact of the various activities covered by the Clayton Act. As this Court ruled in a recent Section 7 case, *United States v. Continental Can Co.*, 378 U.S. 441, 457 (1964):

“Since the purpose of delineating a line of commerce is to provide an adequate basis for measuring the effects of a given acquisition, *its contours must, as nearly as possible, conform to competitive reality.*” [Emphasis added.]

That formulation comports with the reasoning in an earlier action under Section 3, *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961):

“*First*, the line of commerce, i.e., the type of goods, wares, or merchandise, etc., involved must be determined. . . . *Second*, the area of effective competition in the known line of commerce must be



charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies. In short, the threatened foreclosure of competition must be in relation to the market affected." [Emphasis in original.]

Commercial realities rather than arbitrary functional levels also should be the standard under Section 2.

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In sum, the decision below improperly limits the coverage of Section 2(a), excluding from its reach price discriminations whose demonstrably anticompetitive effects do not occur above a predetermined point in the favored purchaser's chain of distribution. Nothing in the original Section 2 language supports such a restrictive interpretation. On the contrary, effectuation of the Act's broad remedial purpose requires, in this case no less than in *Van Camp* and the other decisions of the Court discussed above, that the "in any line of commerce" language be defined to prohibit a lessening of competition in any commercially significant product and geographic market—regardless of whether the favored purchaser is able to structure its distribution system so that the most direct and immediate competitive injury occurs two persons below it. While such evidence may be pertinent in determining whether, *as a matter of fact*, the competitive injury was caused by the price discrimination, it should not be permitted to exonerate from liability, *as a matter of law*, a supplier such as Standard whose price discriminations have been proved to cause the requisite competitive injury.

**B. THE EVIDENCE BEFORE THE JURY PROVED THAT THE WHOLESALE AND RETAIL SELLING OF GASOLINE IN THE PACIFIC NORTHWEST WAS A PROPER LINE OF COMMERCE IN WHICH TO APPRAISE THE IMPACT OF STANDARD'S PRICE DISCRIMINATIONS, AND THAT THE EFFECT OF THOSE DISCRIMINATIONS WAS SUBSTANTIALLY TO LESSEN COMPETITION.**

**(1) The Pacific Northwest Gasoline Market**

On the facts of this case there can be no question that the jury properly could have concluded that the retailing and wholesaling of gasoline in the Pacific Northwest was a commercially significant line of commerce in which it was appropriate to test the anticompetitive impact of Standard's price discriminations. The Pacific Northwest States of Washington and Oregon were the only States in which Perkins could do business under his contract with Standard (Ex. 2, 102, A. 493, 549, 558).<sup>33</sup> See *Standard Oil Co. v. Perkins*, 347 F. 2d 379, 381 (9th Cir. 1965). And Perkins was required to buy the vast bulk, if not all, of his gasoline requirements from Standard (Ex. 2, A. 493-94; Ex. 3). Cf. *Perkins v. Standard Oil Co.*, 235 Ore. 7, 383 P. 2d 107, 111, *mot. for clarification denied*, 383 P. 2d 1002 (1963).<sup>34</sup>

Both Signal and Perkins lifted all the gasoline they marketed in the Pacific Northwest from Standard's Pacific Northwest terminals, principally Willbridge in Portland, with Signal drawing also from Point Wells in Seattle (A. 203; Ex. 280B-1). The Chevron and

<sup>33</sup> Indeed, Perkins' authorized area comprised only part of those States, covering less than one-third of their area (Ex. 1449, A. 587). See the map delineating Perkins' authorized area, reproduced as Appendix B to this brief, p. 80, *infra*.

<sup>34</sup> Each case cited in the text involved an action by Perkins against Standard for breach of contract. The Ninth Circuit affirmed a jury verdict in Perkins' favor. The Oregon case was subsequently settled.

Signal dealers in whose favor Standard made price and price-related discriminations against Perkins likewise were served out of Willbridge (Tr. 1275-76; A. 297). And, as the Ninth Circuit observed, the deadly price war against Perkins was started by Regal in Portland and "it precipitated and sustained a sort of chain reaction throughout Perkins' entire marketing area . . ." (A. 108-09 and fn. 6). Moreover, there is no evidence that the price war affected areas beyond the borders of Washington and Oregon.

The Pacific Northwest clearly was the broadest area of effective competition in which the anticompetitive impact of Standard's discriminatory pricing policy could reasonably be appraised. Perkins could not, as a practical matter, obtain his gasoline requirements from outside that area, and he could sell Standard's products only within that area (see the Statement, pp. 5-7, 11-12, *supra*). The Pacific Northwest, in short, was "the market affected" by Standard's price discriminations. See *Tampa Electric, supra*, 365 U.S., at 327; *Standard Oil Co. v. United States, supra*, 337 U.S. at 299 fn. 5.

**(2) The Lessening of Competition in That Market Caused by Standard's Price Discriminations**

The jury likewise could properly have concluded that competition was substantially lessened in the Pacific Northwest when one of the area's largest independent gasoline wholesale and retail dealers was driven out of business and supplanted by a major. This is particularly true since the price discriminations which caused the independent's demise were granted by Standard—the most powerful supplier in the Pacific Northwest, furnishing nearly 30 percent of the area's gasoline gallonage (A. 373); the price discriminations were continued for over 2½ years until Perkins went out of

business; they were granted in circumstances where Standard had every reason to know that Signal would pass along to Regal those discriminatory price advantages in order to injure Perkins; and they were continued long after Perkins had complained that Standard's discriminations against him were causing his ruin.

Petitioner, by the mid-1950's, was purchasing from Standard and subsequently marketing to the motoring public about 8% of all the gasoline distributed by Standard in the Pacific Northwest (Tr. 1626; A. 373-74; Ex. 5, 6). During the period from March 6, 1955, through December 1, 1957, he sold approximately 20 million gallons of gasoline (Ex. 82F, A. 533). His business volume was substantial under any standard. See *International Salt Co. v. United States*, 332 U.S. 392, 396 (1947).

The jury also had before it substantial qualitative evidence that Perkins' elimination from the market tended substantially to lessen competition. First, the Pacific Northwest gasoline market is dominated by the majors, and the position of the independents has been declining (see the Statement, pp. 11-12, *supra*). Perkins' elimination sharply accelerated that decline.

Secondly, petitioner was not just one of a multitude of small businessmen operating in the affected line of commerce. He was one of the largest independent gasoline wholesalers and retailers in the Pacific Northwest—having a 2.4% market share.<sup>85</sup>

<sup>85</sup> The significance of Perkins' loss in the market he serviced would be roughly comparable to the elimination of Sun Oil Company from the national scene, where Sun enjoyed a 2.5% market share in 1964. See *The Oil & Gas Journal*, February 8, 1965, pp. 50-51, as tabulated in Prewitt, *Reply to Professor Dixon's Comment on the Federal Trade Commission's Report on Gasoline Marketing*, 13 Antit. Bull. 1383, 1394 (1968).



Thirdly, the testimony of Perkins' expert witness (Dr. Vernon A. Mund) emphasized that Pacific Northwest consumers are likely to face "higher prices" as a result of the declining position of the independents. As Dr. Mund stated in response to the following hypothetical question, which was premised on facts set forth in the Statement, *supra*:

"Q [by petitioner's counsel] Taking the period of 1955 through 1957 and assuming the existence of price leadership, as you have defined it in the marketing of gasoline and other petroleum products in the West Coast; and assuming a non-open market for such products as you define the term to us; and assuming a decline of independent jobbers in the industry, that is, the West Coast industry, and assuming a constant upward trend in the West Coast tank wagon price, that is, the price charged to retailers, do you have an opinion as to the economic condition of that market?

\* \* \* \* \*

"A My opinion is under the conditions sketched by you, the trend would be toward increased concentration and an increase in oligopoly and a continued decline of small business with the tendency for the consumer, or the owners to face prospective higher prices." [A. 359-60.]

The critical importance of low prices to consumers was documented in the record by, *inter alia*, the fact that truckers changed their purchasing habits during the price war to buy as much as possible in price-depressed areas (Tr. 691-93, 1228-29; A. 254).

Fourthly, Standard—the discriminator—was the single most powerful supplier in the market, and it discriminated in price against Perkins in circumstances where it had every reason to foresee the anticompeti-

tive effect of its actions (see the Statement, pp. 18-20, *supra*). Perkins' inability to survive Standard's discriminatory conduct—and Standard's obvious ability and determination to keep up the pressure until the foreseeable end came to pass—is a sure sign to the remaining smaller Pacific Northwest independents that they live at the sufferance of the majors. The likely effect will be to lessen their zeal for hard price competition, to the detriment of the public. Moreover, the record contains evidence that the substantial price discriminations involved here could not have been continued for two and one-half years unless market conditions already were anticompetitive. As Dr. Mund observed (A. 353)—

“price discrimination as a business practice can arise and exist only under conditions of some degree of monopoly power. In other words, the conclusion is that price discrimination and monopoly are Siamese twins.”

And, finally, the record contains evidence from which the jury could have found that Standard was likely to continue in the future to favor Signal *vis-a-vis* its competitors so long as Standard was dependent on Signal's crude oil supply (see the Statement, pp. 8-9, *supra*). As the official in charge of the Standard subsidiary (Signal Oil Company) which operated the Signal Branded Dealer stations testified (A. 418):

“[W]hen I was made president of the Signal Oil Company . . . Mr. Sawyer . . . and I were both instructed by Mr. Peterson [President of Standard] that while we were certainly to do a good job in running the Signal Oil Company that we had just acquired, *our main job was to maintain good relations with the Signal Oil and Gas people so that we would under no circumstances jeopardize*

*that supply of crude oil. We had to have it or we could not have met our commitments.*" [Emphasis added.]

Considering these facts, the jury surely could have concluded not only that a substantial lessening of competition was threatened, but that competition in fact had already been substantially lessened. This is particularly true in light of the critical consideration that if Standard could, without legal liability, utilize price discriminations to drive Perkins—one of the largest area independents—out of business, the majors could go on to eliminate virtually every other remaining independent without fear of liability. In *Klor's, Inc. v. Broadway-Hale Stores*, 359 U.S. 207, 213 (1959), the Court observed, in relation to the potential destruction of a much less substantial operation than Perkins' enterprise, that anticompetitive practices are—

"not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups."

It has long been settled, in any event, that *de facto* impairment of competition is not an element of a Clayton Act violation. As this Court has ruled in a Section 3 context:

"Under the law, agreements are forbidden which 'tend to create a monopoly,' and it is immaterial that the tendency is a creeping one rather than one that proceeds at full gallop; nor does the law await arrival at the goal before condemning the direction of the movement." [*International Salt, supra*, 332 U.S., at 396.]

The movement in the Pacific Northwest gasoline market was clearly directed by Standard's price discriminations toward a substantial diminution in the vigor of competition.

The reasonableness of the jury's conclusion that Standard's price discriminations were unlawful is corroborated by the findings of the Federal Trade Commission in its *Report on Anticompetitive Practices in the Marketing of Gasoline* (June 1967). The Commission, analyzing the differences between the majors and the independents, stated that while the "major prefers not to engage in price competition" (pp. 11, 12)<sup>38</sup>—

"[i]ndependents seek market share primarily through a price appeal. Their competitive strategy is to compensate for the majors' usual edge in the number and preferred location of stations within a market, and the majors' expenditures for advertising and customer services such as credit cards and touring assistance, through the maintenance of a price differential." [Emphasis added.]

The Commission went on to observe that (pp. 39-40)—

"[t]he record is clear that independent refiners and marketers exert a beneficial influence upon competition that is disproportionate to their actual representation within the petroleum industry: they have long been innovators of marketing methods and have been the primary agents in translating efficiencies at the production and distribution levels into lower prices at the retail level.

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<sup>38</sup>Continuing, the Commission explained as follows (p. 11): "The total demand for gasoline is highly inelastic, while the demand for branded gasoline is highly elastic depending on price. In such a situation, price competition among the leading sellers can only be detrimental to each member of the class. Price reductions would be followed by sellers of equal size and would not be accompanied by compensating increases in total demand."



They play a part in the industrial pattern that is 'entirely disproportionate' to their size 'in keeping markets competitive, flexible, and dynamic and in preventing a recognition of interdependence and the possible bureaucratic conservatism that go with size and quasipermanent life from stultifying competition." [Quoting from De Chazeau & Kahn, *Integration and Competition in the Petroleum Industry* 383 (1959).]

Price wars, such as the one involved here, constitute the most serious threat to the continued viability of the independents, for, in the view of the Commission, "[b]ecause of industry structure, a continuous pattern of price wars in which the larger firms employ coercive or discriminatory pricing practices could permanently stabilize price among entities engaged in the marketing of gasoline" (pp. 38-39). And, as Dr. Mund testified before the jury, those prices would in all likelihood be stabilized at higher levels (A. 359-60).

Standard contends that the jury could not reasonably find on the record below that its long-sustained price discriminations in favor of Signal caused any lessening of competition (Br. in Opp. 11). It bases this contention on an argumentative assertion that its discriminatory price advantages were not passed on by Signal and a characterization of its price discriminations as "small" and "negligible" (Br. in Opp. 3, 11).<sup>37</sup> The short answer to the latter point is that the adjectives

<sup>37</sup> Standard cites Ex. 1550, for example, as authority for the allegation that its price discriminations in favor of Signal amounted to very little per gallon (Br. in Opp. 4 fn. 4). Perkins presented evidence to the contrary (see Ex. 93 I, M, and N, A. 546, 547), and the jury presumably believed Perkins' evidence that Standard's exhibit excluded from its computations pertinent items such as freight, "temporary" adjustments and major brand designations.

"small" and "negligible" are, to say the least, hardly a fair description of Standard's rebates to Signal of more than \$1 million, a substantial portion of which was directly allocable to Signal's purchases in the Pacific Northwest (see Ex. 23C; p. 13, fn. 16, *supra*). As to passing on, the record contains substantial evidence that Regal obtained the benefits of the price advantages in favor of Signal. Thus, at least one Standard executive recognized that Regal had "'a better price'" than Perkins in the Pacific Northwest (A. 189). In addition, since Regal was part of Signal's corporate family, subject to Signal's power of control (A. 109 fn. 6), a direct pass-through of Standard's price advantages was not a necessary element of a finding that those advantages supported and thus caused the deadly price war against Perkins.

Beyond this, the questions whether Standard discriminated in price against Perkins and, if so, in what amount, and whether Signal passed on to Regal its price advantages, and whether those price advantages caused the destruction of Perkins' business, all were questions of fact properly submitted to the jury and resolved in favor of petitioner. The jury found that Standard's discriminations had caused substantial injury to Perkins' business, and the Ninth Circuit affirmed the jury's findings in this regard (A. 108-09 fn. 6). Those findings should stand.

**C. THE ROBINSON-PATMAN AMENDMENTS TO SECTION 2 OF THE CLAYTON ACT DID NOT ALTER THE ORIGINAL SECTION 2 PROHIBITION OF PRICE DISCRIMINATIONS CAUSING A SUBSTANTIAL LESSENING OF COMPETITION IN ANY COMMERCIALY SIGNIFICANT MARKET.**

The 1936 Robinson-Patman amendments to Section 2 of the Clayton Act, relied upon by the Ninth Circuit (A. 108 and fn. 5), do not provide a rationale for the court's setting aside of the jury verdict. On the contrary, they lend strong support to our argument, for they were clearly intended by Congress to supplement, but not supplant, the original Section 2 provision.

The Robinson-Patman amendments provide that any price discrimination covered thereby is unlawful if it injures, destroys or prevents competition with the discriminating supplier, the favored purchaser or the customer of either (see [b], p. 36, *supra*). The amendments "were motivated principally by congressional concern over the impact upon secondary-line competition of the burgeoning of mammoth purchasers, notably chain stores. However, *the legislative history of these amendments leaves no doubt that Congress was intent upon strengthening the Clayton Act provisions, not weakening them. . . .*" Cf. *FTC v. Anheuser-Busch, Inc.*, 363 U.S. 536, 543-44 (1960) (fn. omitted) (emphasis added). Congress sought to achieve this strengthening by lowering the standard of proof of a violation in certain circumstances. As the Report of the Senate Judiciary Committee (S. Rep. No. 1502, 74th Cong., 2d Sess. 4 (1936)) emphasized, the original Section 2 of the Clayton Act had—

"in practice been too restrictive, in requiring a showing of general injury to competitive conditions in the line of commerce concerned; whereas the

more immediately important concern is in injury to the competitor victimized by the discrimination. Only through such injuries, in fact, can the larger general injury result, and to catch the weed in the seed will keep it from coming to flower."

That sentiment was echoed in H. Rep. No. 2287, 74th Cong., 2d Sess. 8 (1936).

The same point was made on the House floor by Representative Utterback (80 Cong. Rec. 9417 (1936) (emphasis added)):

"The discriminations prohibited by this bill are those whose effect may be:

- "1. Substantially to lessen competition in any line of commerce; or,
- "2. To tend to create a monopoly in any line of commerce; or
- "3. To injure, destroy, or prevent competition:
  - "(a) With any person who either grants or knowingly receives the benefit of such discrimination; or
  - "(b) With customers of either of them (i.e., the grantor or grantee).

*"Effects Nos. 1 and 2 above correspond to those required to be shown under the old section 2 of the Clayton Act. Generally speaking, they require a showing of effect upon competitive conditions generally in the line of commerce and market territory concerned, as distinguished from the effect of the discrimination upon immediate competition with the grantor or grantee."*

Thus, under the Robinson-Patman amendments a violation may be premised upon proof of substantial injury to specific competitors of the favored purchaser.



or its customers (see Point III, pp. 58-62, *infra*). Where such second or third line injury is present, no substantial lessening of competition in an overall "line of commerce" need be shown. *E.g.*, *FTC v. Morton Salt Co.*, 334 U.S. 37, 50 (1948); *Foremost Dairies, Inc. v. FTC*, 348 F. 2d 674, 678 (5th Cir. 1965). For this reason, most Section 2 actions have since been brought under the Robinson-Patman amendments.<sup>38</sup>

Nothing in the language of those amendments, their legislative history and subsequent enforcement policy, however, justifies the Ninth Circuit's holding that petitioner's proof, which satisfied the stricter standard of the original Section 2, provides no basis for the jury verdict. Congress manifestly did not intend its loophole closing amendments to convolute the entire statutory scheme, in effect reading out of the Act the original Section 2 provision and precluding all causes of action premised thereon.

Indeed, by leaving untouched the original Section 2 language, Congress negated that possibility. The amendments specifically cover primary line, secondary line and tertiary line injury. It is essential, therefore, that injury not occurring at those levels be cognizable under the original prohibition of price discriminations which may tend substantially to lessen competition "in any line of commerce," or else that language will be mere surplusage, having exactly the same scope as the Robinson-Patman amendments but imposing a greater

<sup>38</sup> "There is . . . no incentive for the Commission to distinguish sharply between the two kinds of injury nor for the respondents to insist on such a distinction. Whatever type of injury can be most conveniently proved is likely to become the basis of the Commission's case. Since a showing of injury to a class of competitors is usually easier than a showing of injury to competition in the market, efficiency and economy in law enforcement suggest emphasis on the narrow concept rather than the broad one." Edwards, *The Price Discrimination Law* 540. (1959).

burden of proof. Such a result not only would be contrary to the plain intendment of the amendments, it would violate the cardinal rule of statutory construction that, when possible, all words in a statute must be given a reasonable and meaningful interpretation. See, e.g., *Ex Parte Public Nat'l Bank*, 278 U.S. 101, 104 (1928).

### III.

**THE JURY PROPERLY COULD HAVE RETURNED A VERDICT AGAINST STANDARD ON THE GROUND THAT ITS PRICE DISCRIMINATIONS AGAINST PERKINS INJURED, DESTROYED OR PREVENTED COMPETITION WITH THE FAVORED PURCHASER, SIGNAL, PERKINS' COMPETITOR ON THE WHOLESALE LEVEL.**

Independent of the Ninth Circuit's error in holding that Section 2 of the Clayton Act has no applicability in so-called fourth line cases (discussed in Point II above), the court fundamentally misconceived the nature of this case in ruling that it involved fourth line injury. The district court submitted to the jury the question whether Standard's favored purchaser, Signal, and its disfavored purchaser, Perkins, were competitors.<sup>39</sup> The jury properly could have found that

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<sup>39</sup> The trial judge charged the jury that Perkins claimed he was injured by having to buy from Standard—

"at higher prices than the prices charged by Standard to plaintiff's competitors with respect to gasoline both on regular and premium grade.

"*The particular competitors concerned are Signal Oil and Gas Company and Chevron dealers and Signal dealers. . . .*"

[A. 44, emphasis added.]

Continuing, the judge noted that one of the essential elements of this aspect of Perkins' claim was proof "that Standard sold gasoline to Clyde Perkins at higher prices than the prices charged by Standard on reasonably contemporaneous sales of gasoline of the same type to competitors" (A. 49, emphasis added). And, in a reiteration of the above charge, the judge added the words "of plaintiff" after "competitors" (A. 50).

they were competitors because the uncontroverted evidence established that each purchased gasoline directly from Standard; each wholesaled that gasoline in the Pacific Northwest; and the retailers served by each actively competed for the patronage of the motoring public. See the Statement, pp. 5-7, 10, *supra*. And there can be no doubt that a price discrimination which causes the destruction of a competitor of the favored purchaser "injure[s], destroy[s], or prevent[s] competition with any person . . . receiv[ing] the benefit of such discrimination . . ." within the meaning of the Robinson-Patman amendments to the Clayton Act. The facts of the instant case therefore provide an example of second line injury cognizable under those amendments.

It is of course true that a more traditional second line injury case would involve price discriminations between wholesalers which compete for sales to the same retailers. But the scope of the Robinson-Patman Act is not limited to such situations. Indeed, one of the paramount concerns of Congress, manifested throughout the legislative history, was that large direct-buying retailers should not be able to obtain from their suppliers better prices than wholesalers serving the competitors of the direct-buying retailers. See *FTC v. Morton Salt Co.*, 334 U.S. 37, 43, 49 (1948). This fact demonstrates a congressional recognition that the favored and disfavored purchasers need not directly vie for the trade of anyone in order for price discriminations between them to be actionable under the Robinson-Patman amendments.

The courts and the Federal Trade Commission consistently have followed the congressional direction in this regard, looking to overall economic and commercial

realities in interpreting the word "competition" as used in those amendments. See, e.g., *FTC v. Morton Salt Co.*, *supra*.<sup>40</sup> As the court succinctly put it in *Krug v. International Tel. & Tel. Co.*, 142 F. Supp. 230, 236 (D.N.J. 1956), a case involving price discriminations between a wholesaler and a direct-buying retailer:

"The wholesaler is one of the immediate purchasers from the manufacturer and it would seem to make no difference that his injury was not suffered by his inability to compete with others on his own distributive level but by the failure of his customers to meet the competition of another immediate purchaser from the manufacturer."

See also, *Guyott Co. v. Texaco, Inc.*, 261 F. Supp. 942, 950-51 (D. Conn. 1966).

Employing the same essential rationale, two district courts recently ruled that Section 2(a) prohibited price discriminations between wholesalers in circumstances where both the favored and disfavored purchasers resold to retailers before any direct competitive confron-

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<sup>40</sup> *Morton Salt* involved a situation where five direct-buying retailers (chain stores) purchased salt at a lower price than wholesale customers of the suppliers. "As a result of this low price these five companies have been able to sell Blue Label salt at retail cheaper than wholesale purchasers from respondent could reasonably sell the same brand of salt to independently operated retail stores, many of whom competed with the local outlets of the five chain stores." 334 U.S., at 41. Affirming the Federal Trade Commission's finding of a violation of Section 2(a), the Court ruled (*id.*, at 46-47):

"Here the Commission found what would appear to be obvious, that the competitive opportunities of certain merchants were injured when they had to pay respondent substantially more for their goods than their competitors had to pay."



tation occurred. *Ingram v. Phillips Petroleum Co.*, 259 F. Supp. 176 (D.N.M. 1966); *McCormack v. Theo. Hamm Brewing Co.*, 284 F. Supp. 158 (D. Minn. 1968). In *Theo. Hamm, supra*, at 163, the court observed that it "should not remain blind to the fact that a distributor's success depends in large part upon the success of the retailers with which it deals." Similarly, the court in *Ingram* ruled that the favored and disfavored wholesalers were "in practical competition" because the retailers served by each, while located in different towns, competed for the patronage of persons who "shop in both towns and patronize businesses in both places." 259 F. Supp., at 182.

The question whether Perkins and Signal were "in practical competition" is a factual one which, on the record below, the jury properly could have answered in the affirmative. As the testimony of Dr. Mund indicated, the success or failure of wholesale gasoline distributors is directly related to the success or failure of the retail outlets dispensing their gasoline (Tr. 2504). In the final analysis, as the court of appeals observed, it was the diversion of sales (and profits) from the retail outlets served by Perkins to the Regal retail outlets served by Signal that "adversely affected" Perkins' business (A. 109 fn. 6). The jury reasonably could have concluded that that fact was of sufficient importance to warrant, if not compel, a finding that Perkins and Signal were competitors, despite Standard's asserted lack of "evidence in the record that petitioner and Signal ever competed for the trade of anyone" (see Br. in Opp. 13) and the interposition of Western Hyway between Signal and the Regal retail outlets.

Here again the reasonableness of the jury's conclusion is evidenced by the findings of the Federal Trade Commission's *Report on Anticompetitive Practices in the Marketing of Gasoline, supra*. As that Report noted (p. 3), apart from competition at the supplier level, direct competition in gasoline marketing occurs almost solely at the retail level because intermediate distributors (such as wholesalers) are essentially locked in to one supplier and specific retail outlets:

"[J]obber and retail customers are secured through ownership or contractual arrangements which have the effect of making the product of one supplier the only product dispensed by a given outlet. A distributor or dealer's contractual arrangements with his supplier, his investment, brand commitment, and other factors, weigh heavily against his shifting from one supplier to another. The suppliers, minimally concerned with retention of wholesale customers, focus their primary competitive endeavor at the retail level."

The jury verdict against Standard, in short, demonstrates a recognition that in the realities of gasoline marketing "[t]he retail stations . . . are the instrumentalities through which competition for this ultimate market is waged." *Standard Oil Co. v. United States*, 337 U.S. 293, 323 (1949) (Mr. Justice Jackson dissenting). That verdict should have been permitted to stand.

## IV.

**THE COURT OF APPEALS ERRED IN HOLDING THAT PERKINS' CLAIM WAS DEFEATED BY HIS FAILURE TO ESTABLISH THAT THE SUBSIDIARIES IN SIGNAL'S CHAIN OF DISTRIBUTION WERE MERE TOOLS OF THE FAVORED PURCHASER.**

Much of the gasoline Standard sold to Signal (one of its favored purchasers) in the Pacific Northwest was resold by Signal to Western Hyway which, in turn, resold it to Regal (A. 109 fn. 6). During the claim period "Signal was in a position to exercise control over Regal," as the court of appeals recognized, because it owned 60 percent of Western Hyway's stock and Western Hyway owned 55 percent (and later 100 percent) of Regal's stock (*ibid.*). While these facts are not critical in the context of the arguments developed in Points II and III, *supra*, they are nonetheless important in that context insofar as they provided the jury with an additional reason for concluding that the price advantages Signal received from Standard supported Regal's price war, causing Perkins' destruction. Beyond this, the family relationship existing among Signal, Western Hyway and Regal gives rise to an independent basis for reversing the decision below. The Ninth Circuit ruled that the actions of Regal and Western Hyway were not attributable to Signal because Signal did not exercise its power to control the operations of those firms. That ruling was in error.

The question whether a parent corporation actually controls the operations of its subsidiaries is a factual one, and the record below contains evidence from which the jury properly could have inferred that Signal did, in fact, control Western Hyway and Regal to the extent necessary to accomplish Perkins' destruction.

We begin with the undisputed premise, acknowledged by the court of appeals, that the ultimate power to direct Regal's activities lay in the hands of Signal (A. 109 fn. 6). Signal therefore could (and surely would) have stopped Regal's price-cutting activities had a deteriorating retail price structure not been in accord with its overall Pacific Northwest marketing program. Moreover, those Standard executives familiar with Signal and its relationship to Regal accurately predicted that, unless Standard intervened, Signal would utilize its price advantages to enable Regal to " 'wreck' " the Pacific Northwest market as it had " 'done other places' " (A. 189, 201).

Both Standard and Signal ignored the separate corporate existence of Western Hyway when business reasons made it seem advantageous to do so. Thus, for example, Standard treated an offer by Union Oil Company to sell gasoline at a reduced price to Western Hyway as an offer directly to Signal (Ex. 1707, 1709, A. 653, 655; A. 438-39). And, what is more important, Signal officials themselves used the same offer to Western Hyway as the equivalent of an offer to Signal when attempting to extract a yet lower price from Standard (Tr. 5526-27)..

Further proof that Signal in fact controlled Western Hyway and Regal is found in the confused testimony of Signal officials as to the precise nature of the intercorporate relationships between the companies, particularly the testimony of the auditor for Western Hyway and all the Regal companies (p. 10, fn. 11, *supra*). While informed corporate officials may be confused about the precise status of various controlled subsidiaries, the jury reasonably could have concluded that the men in charge surely would be able



to distinguish between controlled subsidiaries, on the one hand, and independent subsidiaries, on the other.

The jury, in sum, had before it evidence that the deteriorating Pacific Northwest price structure was in accord with Signal's marketing objectives, as well as evidence that Signal had, in fact, treated Western Hyway as its dependent transportation arm when such treatment accorded with the parent's business objectives. From these facts the jury could reasonably have inferred that Signal controlled Western Hyway and Regal during the claim period to the extent necessary to achieve its aim.<sup>41</sup>

It is important to emphasize that the underlying issue on this aspect of the case is whether a favored buyer can immunize a seller who grants price discriminations in its favor from the proscriptions of Section 2 of the Clayton Act through the manipulation and utilization of subsidiaries. That Signal may not have chosen to exercise to the hilt its power fully to control Western Hyway and Regal is not significant in this context. The price discriminations were granted by Standard to Signal. Whether Regal did or did not have the pricing flexibility to injure retailers served by Perkins depended solely upon whether Signal itself decided to use Standard's price advantages to support Regal's price cutting activities. Standard was well aware of Signal's capabilities and likely action in this regard (see fn. 19, p. 19, *supra*). Therefore, since Signal decided to do all that was necessary to drive

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<sup>41</sup> Moreover, the confusion within the Signal organization itself—among people who had access to all the facts—surely could persuade the jury that Perkins faced an insurmountable task in obtaining further evidence as to the precise manner in which Signal's power to control had in fact been exercised.

Perkins out of business, Standard should not be able to escape the consequences of its price discriminations merely because Signal may not have gone farther and exercised in all other respects its power to control the operations of Regal.

*National Lead Co. v. FTC*, 227 F. 2d 825 (7th Cir.), *rev'd on other grounds*, 352 U.S. 419 (1957), is not to the contrary. In that case, Anaconda Copper Mining Company and two wholly-owned subsidiaries were charged with pricing practices violative of Section 2(a) of the Clayton Act. After finding a violation by the subsidiary-seller, the Seventh Circuit refused to hold the parent, Anaconda Copper, responsible for the violation absent a showing that the subsidiary's separate corporate identity was a "mere fiction" and it was a "mere tool" of the parent. 227 F. 2d, at 829. While that stringent standard may be appropriate in assessing liability once a violation is found and it is clear that someone will be held responsible, it should not be permitted to enable a corporation to use subsidiaries "to circumvent a statute." See, *e.g.*, *Corn Products Refining Co. v. Benson*, 232 F. 2d 554, 565 (2d Cir. 1956). This is particularly true where, as here, the jury properly could have found that Signal exercised its power over its subsidiaries to the extent necessary to achieve the goal prohibited by the Clayton Act. Compare *Baim & Blank, Inc. v. Philco Corp.*, 148 F. Supp. 541, 544 (E.D.N.Y. 1957).

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One additional point deserves brief mention. Standard argued that its price discriminations in favor of Signal were lawful as lower prices offered "in good faith to meet the equally low price of a competitor..."

(15 U.S.C. § 13(b)), Union Oil Company (see p. 64, *supra*). The jury, in returning a verdict against Standard, implicitly rejected this defense, and the court of appeals did not discuss the legal merits thereof. Attempting to provide guidance for the trial judge during the new trial it had ordered, the court criticized two actions he had taken relating to this defense. But the court nowhere ruled that those actions constituted reversible error.

The first criticized action was the judge's refusal to admit evidence of prices being offered by Union more than eight months after Standard had reduced its price (A. 116). In so ruling the trial judge clearly exercised his discretion in a proper manner. Whatever slight probative value, if any, that evidence might have had as "the basis for an inference that the prices were those offered during the critical period by Union . . ." (A. 116) would have been far outweighed by the confusion engendered by interjecting a collateral issue into the case: whether Union's offer of a lower price, which followed Standard's price reduction, was made in reaction to Standard's price reduction, not *vice versa*. See, e.g., *Checker Motors Corp. v. Chrysler Corp.*, 283 F. Supp. 876, 889-90 (S.D.N.Y. 1968), *aff'd*, 1969 Trade Cases ¶ 72,672 (2nd Cir. 1969), *Pet. for cert.* filed March 14, 1969 (No. 1156, O.T. 1968).

Secondly, the court of appeals criticized the judge's charge on Standard's meeting competition defense. The instruction in question reads as follows:

"Before the defense of good faith meeting of competition may be used by the defendant under the provisions of the law, there must have been a definite offer which was extended by a competitor of defendant Standard to a customer of defendant

and defendant must have been aware of such offer and must have acted in good faith in meeting such competitive offer. Therefore, Standard cannot use this defense unless it knew or was given to reasonably believe while acting in good faith that its customer, Signal Oil and Gas Company, did in fact receive a competitive offer from another potential supplier for like products under similar circumstances, and on or before the time Standard's lower price was extended to Signal Oil and Gas Company and Standard then acted in good faith in meeting such competitive offer." [A. 64.]

The Ninth Circuit, emphasizing the phrase "definite offer," held that that part of the instruction, "standing alone," was clearly erroneous (A. 116). The court went on to observe what is clear from the above quotation—that the questioned language did not stand alone, it was immediately followed by language "which correctly stated the rule" (A. 117 fn. 10). Assuming *arguendo* that the Ninth Circuit's suggestion of error was correct, the short answer is that instructions must be "considered as a whole." *E.g. Sweet Milk Co. v. Stanfield*, 353 F. 2d 811, 813 (9th Cir. 1965). So considered, the charge below plainly did not constitute reversible error. See, *e.g. Smith v. Wire Rope Corp.*, 383 F. 2d 186, 188 (8th Cir. 1967); *Standard Oil Co. v. Perkins*, 347 F. 2d 379, 389 (9th Cir. 1965); *United States ex rel Marcus v. Hess*, 41 F. Supp. 197, 217 (W.D.Pa. 1941), *rev'd on other grounds*, 127 F. 2d 233 (3rd Cir.), *rev'd on other grounds*, 817 U.S. 537 (1943).



## V.

**THE JURY'S AWARD OF DAMAGES SHOULD BE REIN-  
STATED AS A JUST AND REASONABLE ASSES-  
MENT OF THE DAMAGE SUSTAINED BY PETITIONER  
AS A RESULT OF STANDARD'S ANTITRUST VIOLA-  
TION.**

This case, as the Ninth Circuit acknowledged, is "factually complicated" (A. 115), and Standard's discriminatory conduct was pervasive and far reaching. Its price discriminations in favor of Signal and the Branded Dealers permitted them to support retail price wars throughout much of the Pacific Northwest. Moreover, its discriminations included the granting of varying price-related benefits as well as price advantages to the favored purchasers—requiring assessment of Sections 2(a), 2(d) and 2(e) of the amended Clayton Act. In addition, its principal favored customer, Signal, sold directly to competitors of Perkins as well as to Regal through Western Hyway. See the Statement, pp. 9-18, 20-21, *supra*.

After hearing all the evidence and deliberating for two days, the jury returned a verdict against Standard, awarding Perkins \$336,404.57 in actual damages. The Ninth Circuit set aside the entire verdict and remanded the case for a new trial on the theory that, since Regal's conduct, as a matter of law, could not be part of Standard's Section 2(a) violation, "the detrimental effect Regal exerted upon competition is not attributable to and would not support an award of damages against Standard" (A. 108-09). A ruling in favor of petitioner on any one of the grounds discussed in Points II, III, and IV above would necessarily require reinstatement of Perkins' damages attributable to Regal's conduct. And reinstatement of those damages would

terminate this litigation, except for one remaining minor question discussed below.

Following its ruling as to the Regal-caused damages, the court observed that (A. 110)—

“[i]nasmuch as the case must be returned to the district court and tried anew, we believe it appropriate to briefly comment upon several of Standard’s remaining points.”

In the remainder of its opinion the court made a few rulings on the subject of damages. Thus, it held, favorably to petitioner, that diminution of the going concern value of his business was an element “of injury properly the subject of damages” (A. 113). The court also ruled that the following items were not proper elements of damages as to Perkins’ individual claim (*ibid.*):

“that the Perkins corporations did not pay him 1(a) an agreed brokerage fee for securing their gasoline; (b) rentals on leases of service stations and other property, and (c) other indebtedness; (2) that he was unable to collect rentals for service stations leased to independent operators. . . .”

Assuming *arguendo* that the court would have set aside the entire award in favor of Perkins (as an individual) on the above ground had it not previously decided that a remand was essential for a different reason—a highly doubtful proposition—it is clear that the court’s ruling was erroneous.<sup>42</sup> That ruling improperly usurped the

<sup>42</sup> The remainder of this brief deals only with Perkins’ individual claim since the Ninth Circuit found no error (apart from the Regal situation) in the claims made on behalf of the Perkins corporations (see A. 112). The jury’s untrebled award to Clyde Perkins individually was \$185,022.52 (A. 105 fn. 1).

traditional role of the jury in awarding damages in private antitrust suits—a role which this Court consistently has upheld.

In *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 564 (1931), this Court held the following criteria applicable to a jury's assessment of damages in private antitrust actions:

“ ‘Juries are allowed to act upon probable and inferential, as well as direct and positive proof. And when, from the nature of the case, the amount of damages can not be estimated with certainty, or only a part of them can be so estimated, we can see no objection to placing before the jury all the facts and circumstances of the case, having any tendency to show damages, or their probable amount; so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit.’ ” [Emphasis added.]

The Court in *Story Parchment* went on to reinstate the jury verdict, reversing the court of appeals' holding that the plaintiff had failed to prove that depreciation in value of its plant had been caused by the antitrust violation.

In the same vein, *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359, 379 (1927), held that, while the damage award of a jury cannot be predicated upon speculation, it is legally sufficient if the award is based upon data allowing the jury, as a matter of reasonable inference, to assess the probable loss inflicted by the antitrust violation. Once that determination is made —

“the question as to amount of the plaintiff's damages having been properly submitted to the jury, its determination as to this matter is conclusive.” [Ibid.]

To the same effect is, *e.g.*, *Flintkote Co. v. Lysfjord*, 246 F. 2d 368, 392 (9th Cir.), *cert. denied*, 355 U.S. 835 (1957), where the court ruled that "the controlling rule today in seeking damages for loss of profits in antitrust cases is that the plaintiff is required to establish with reasonable probability the existence of some causal connection between defendant's wrongful act and some loss of anticipated revenue. Once that has been accomplished, the jury will be permitted to 'make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly.' "

In disregard of this long-standing division between the role of the appellate court and the role of the jury in awarding damages in private antitrust actions, the Ninth Circuit—focusing upon a few isolated items of evidence out of a record encompassing over six thousand pages of transcript and hundreds of exhibits—nullified the jury's entire award of damages to Clyde Perkins individually. In so doing, the court not only misapprehended its proper role in reviewing jury damage awards, it also misunderstood the character of the questioned evidence and the trial court's instructions on the issue of damages.

The trial judge's charge to the jury on damages outlined several elements which could be considered in evaluating the damage claims of Perkins (A. 65-67). In view of the three separate claims involved (those of Perkins as an individual and the two corporations), the judge admonished the jury not to permit recovery on the same element of damage more than once (A. 67). Continuing, he charged that while recovery could be had by Clyde Perkins individually for diminution in "the good will or going concern value of [his] property," based on an assessment of probable future



profitable operations, such a recovery would be proper only after the jury had first determined that Perkins' property possessed a goodwill or going concern value prior to the time of the alleged violation (A. 68-69).

Defining the separate categories of evidence that could be considered by the jury in evaluating damages, the trial judge never even referred to monies owed but not paid to Clyde Perkins as brokerage fees, rentals on leases of service stations and other property, other indebtedness, and rentals on service stations leased to independent operators (see A. 64-73)—the items held improper as elements of damage by the Ninth Circuit (A. 113).<sup>43</sup> In fact, the trial judge charged the jury, as a matter of law, that Perkins could not recover for "any diminution in the value of real or personal property owned by him and leased to Perkins of Oregon or Perkins of Washington, or to independent operators or service stations or bulk plants supplied by said corporations" (A. 71). The jury was charged, in sum, as to Perkins' leaseholds and other real and personal property, that petitioner could only recover damages to the extent that the going concern or goodwill value of those holdings had been diminished by Standard's unlawful conduct.

In addition, the jury was instructed that it could not award damages predicated on the goodwill or going concern value of Perkins' holdings and, at the same time, award damages for loss of net profits due to loss of sales or loss of customers (A. 69). The jury also

<sup>43</sup> Neither did Perkins damage computations, introduced through his accountant, make any mention of those items (see Ex. 82B, C, D, E, F, G-2, J, L, M, O, P, A. 528-40; Ex. 82G-1, N).

was instructed that it could not base any findings on conjecture or speculation (A. 72). Viewed in light of the trial judge's careful and detailed instructions, the evidence which concerned the Ninth Circuit could not have been involved in the jury's award of damages.

That evidence, moreover, was relevant and admissible on the question whether Perkins individually had suffered injury by reason of Standard's unlawful conduct. Before Perkins was entitled to claim and recover "damages" for loss of the going concern value of his property, he had to establish that Standard's unlawful conduct had "injured" him in his business or property.<sup>44</sup> Under Section 4 of the Clayton Act, injury is a prerequisite to standing to sue, and damages are the laws cognition of injury. This Court has long recognized the basic distinction between the fact of harm—legal injury—and the amount of damages incurred as a result of that injury. See, e.g., *Story Parchment Co. v. Paterson Parchment Paper Co.*, *supra*, 282 U.S., at 562; *Timberlake, Federal Treble Damage Antitrust Actions* § 20.02, at 289-93 (1965). And while proof of injury often will be interwoven with proof of damages, there is no legal requirement that the two be coextensive. In this case, Standard's unlawful conduct destroyed Perkins' business, and petitioner understandably sought to evidence a complete picture of that destruction—with the questioned evidence being part of that picture. Certainly Standard is in no position to complain that

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<sup>44</sup> Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that "[a]ny person who shall be *injured* in his business or property by reason of anything forbidden in the antitrust laws . . . shall recover threefold the *damages* by him sustained. . . ." [Emphasis added.]

some of the injury it wrought upon Perkins was evidenced but not submitted to the jury as an element of damages.

The Ninth Circuit ruled that the questioned evidence was improper on the rationale that lost rentals and debts cannot be claimed as antitrust damages by "the bystander who was hit but not aimed at," quoting *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 363 (9th Cir. 1955). It is difficult to conceive of a more inapposite quotation in the circumstances of this action. It was Perkins who paid Standard the discriminatorily high price. He was the precise person at whom the unlawful conduct was aimed. And, indeed, Standard had been put on notice that its aim was hitting the mark (see the Statement pp. 18-20, *supra*). On these facts Perkins compellingly established his right to recover all damages to his business caused by Standard's unlawful conduct, even under the most stringent test of recovery—that a "plaintiff must show that his loss was not a consequence of injury to someone else, *i.e.*, that he had direct relations with the wrongdoer. . . ." Note, *Standing to Sue for Treble Damages Under Section 4 of the Clayton Act*, 64 Colum. L. Rev. 570, 581-85 (1964), and cases cited therein (emphasis added); see *Loeb v. Eastman Kodak Co.*, 183 Fed. 704 (3rd Cir. 1910).

*Karseal* itself supports Perkins' right to recover. There, the defendant had entered into exclusive dealing arrangements with retailers, requiring them to purchase car wax (among other products) only from it or suppliers designated by it. *Karseal* was a manufacturer of car wax which, through a distributor, attempted to sell to the same retailers. The defendant argued that since its restraint of trade had been im-

pressed upon individual retailers one step removed from Karseal's distributor, and yet another step removed from Karseal, any damages suffered by the manufacturer were not cognizable under Section 4 of the Clayton Act. The court disagreed, holding that the exclusive dealing arrangements had the necessary effect of denying competitive manufacturers of car wax access to a substantial number of potential outlets, and that Karseal therefore fell well within the target area of the illegal practices. *A fortiori*, Perkins, who dealt directly with Standard, was within the "target area" as defined in *Karseal*. See also *Hoopes v. Union Oil Co.*, 374 F. 2d 480, 484-85 (9th Cir. 1967).

In conclusion, the ruling of the court below, if permitted to stand, would make jury damage awards in treble damage actions fragile vessels indeed—subject to complete destruction by any possible evidentiary mishap which might occur at trial. Moreover, it would do so in circumstances where the court did not so much as suggest that the total award in favor of Perkins individually was unjust and unreasonably high, as manifestly it could not do. For example, Perkins' evidence showed that, as a result of Standard's discriminations in favor of Signal alone, the going concern value of the stations he owned decreased by \$136,441, and the going concern value of the stations he leased decreased by \$29,915 (Ex. 82J, 82L, A. 535, 536)—totaling some \$20,000 less than the jury award to him individually.

Standard discriminated against Perkins in price, service and payments for two and one-half years throughout his entire territory—violating three separate sections of the amended Clayton Act in the process. As a result, Perkins' business was ruined. Big violations of law engender considerable evidence of injury,



and the violator runs the risk that the jury may not precisely delineate the point where legal injury ends and recoverable damages begin. But in such cases, as in those where some speculation is required of the jury due to the nature of the antitrust violation, "[t]he most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created." *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946). The jury verdict in favor of Perkins should be reinstated.

### CONCLUSION

The judgment of the Ninth Circuit should be reversed. The judgment of the district court should be affirmed, and the award to petitioner of \$1,298,213.71 in damages and attorney's fees should be reinstated.

Respectfully submitted,

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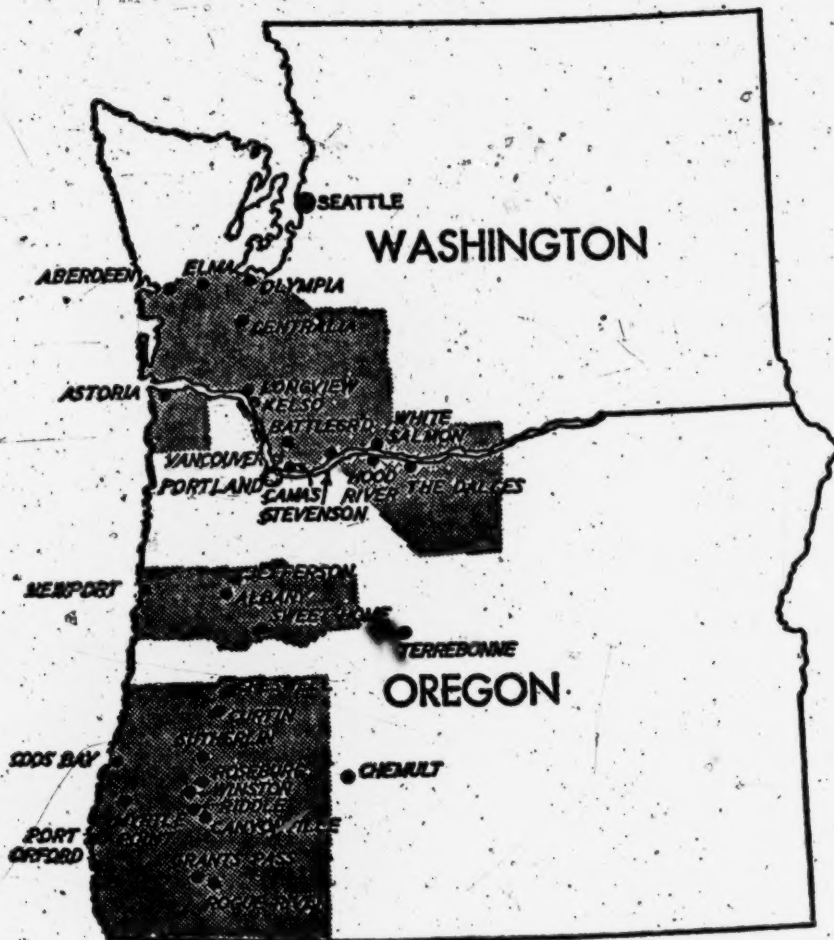
## APPENDIX A

EXHIBIT NUMBER	OFFERED	RECEIVED IN EVIDENCE
1	2143*	2143
2	1307	1307
3	220	220
4A	1408	1408
4B	291	291
5	313	313
6	313	313
21A	2464-65, 3545	2485, 3546
23B	1972	1975
23C	1972	1975
23D	1972	1975
23H	1455	1455
63	2906	2907
81J, K, S, T, U	2009	2012
82B	3631	3639
82C	3593	3623
82D	3593	3623
82E	3650	3819
82F	3650	3819
82G-1	3687	3687
82G-2	3685	3695
82J	3716	3729
82L	3741	3744
82M	3747	3749
82N	3776	3782
82O	3786	3790-91
82P	3850	3851
93B	3305	3308-09
93B-1	3295	3303
93C	3334	3335
93D	3350, 3354	3355
93 I	3013, 3020, 3418	3418
93M	3416, 2988	3417, 3011
93N	3416	3417
99	2868	2869-70, 2876

\* All page references in this Appendix are to the unprinted transcript of proceedings in the district court.

EXHIBIT NUMBER	OFFERED	RECEIVED IN EVIDENCE
102	1249	1249
106C	2207	2221
235	2640	2642
239	2404	2406
280B-1	2325	2325-26
282C-5	1352	1352-53
283A	2436	2437
284A, B	3075	3077
335	2686	2686
343A	2940	2940
343B	2946	2946
349	3098	3098
1003	1593	1594
1449	4276	4282
1453B	4522	4522
1453X, Y	4544	4545
1453AA, BB	4544	4545
1465	5143	5144
1515B	5619	5620
1524	4307-08	4312
1550	4321	4361
1707	5523	5524
1709	5533	5533

## APPENDIX B

MARKETING AREA OF  
CLYDE A. PERKINS' OPERATIONS

0 20 40 60 80 100  
SCALE - MILES

Note—Area Where Perkins  
Marketed Standard Oil  
Products Is Shaded.

SOURCE — Ex. 1449, A. 587





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**SUPREME COURT U. S.**

**No. 624**

**ORIGINAL CASE FILED**

**APR 7 1968**

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**In the Supreme Court of the  
United States**

**OCTOBER TERM, 1968**

**CLYDE A. PERKINS, *Petitioner***

**v.**

**STANDARD OIL COMPANY OF CALIFORNIA**

**ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT**

**Brief for Respondent**

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# In the Supreme Court of the United States

OCTOBER TERM, 1968

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No. 624

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CLYDE A. PERKINS, *Petitioner*

v.

STANDARD OIL COMPANY OF CALIFORNIA

---

**ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT**

---

## **Brief for Respondent**

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### **OPINIONS BELOW**

The opinion of the court of appeals (A. 104-117) is reported at 396 F.2d 809. The court of appeals' opinion denying a petition for rehearing (A. 103-104) is reported at 396 F.2d 809, 817. The court of appeals' opinion in response to petitioner's motion for clarification (A. 102) is incorporated in the principal reported opinion. Judge William G. East, the trial judge, rendered no opinion.



## **JURISDICTION**

The judgment of the court of appeals was entered on November 2, 1967 (A. 7). The petition for rehearing was denied on July 11, 1968 (A. 103).<sup>1</sup> The petition for a writ of certiorari was filed on October 9, 1968, and was granted on January 13, 1969 (393 U.S. 1013). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **QUESTIONS PRESENTED**

The principal question presented is:

1. Whether the Robinson-Patman amendments to Section 2(a) of the Clayton Act apply to fourth-line competition.

Subsidiary questions are:

2. Whether (a) petitioner may urge the original provisions of Section 2(a) of the Clayton Act in an effort to support the judgment below, in view of the fact that this issue was not raised or passed upon in the court of appeals, and, (b) if the issue be considered, whether this record shows a violation of such provisions.

3. Whether the court of appeals was correct in its ruling that the trial court erred on certain damage issues and, if so, whether these errors, and other numerous errors by the trial court, require that there be a new trial.

## **STATUTES INVOLVED**

The relevant statutes are set out at pp. 3-4 of petitioner's brief, except for section 2(b) of the Clayton Act, as amended

---

1. A docket entry in the court below (A. 7) purports to reflect the filing of an order denying the petition for rehearing on July 9, 1968, from which date the petition would be out of time. However, the parties were served only with the July 11 opinion, and we are informed that the July 9 entry is erroneous.

by the Robinson-Patman Act, 49 Stat. 1526, 15 U.S.C. § 13(b) which provides:

"(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

## STATEMENT

### 1. Introduction.

This is an action brought by petitioner against Standard Oil Company of California (Standard) for treble damages for alleged violations of Section 2(a) of the Clayton Act as amended by the Robinson-Patman Act.

The case was tried in the District of Oregon before District Judge William G. East and a jury. After an extended trial in which there was compiled a record of some 6,400 pages of transcript and more than 15,000 pages of exhibits, the jury returned a verdict of \$336,404.57 for petitioner. Judgment for treble that amount was entered which, with judgment for \$289,000 in attorneys' fees for petitioner, made the total judgment against Standard \$1,298,213.71. Standard appealed to the United States Court of Appeals for the Ninth Circuit, which reversed the judgment of the district court and directed a new trial.

## 2. Petitioner's brief.

A proper consideration of the issues in this case requires, at the outset, a correction of the misstatements of the record in petitioner's presentation. Petitioner's brief presents the case of a narrow and technical ruling by the court of appeals on a record reflecting widespread predatory price discriminations by Standard in favor of its dealers and its customer Signal Oil and Gas Company (Signal), which depressed prices to ruinous levels and which destroyed petitioner's business. This is untrue, and the record references given in petitioner's brief in an effort to make this story credible do not support his statements. We refer, at the outset, to a number of material misstatements which are discussed more fully later in this brief.

Petitioner states that in Portland in mid-1936 Regal stations cut prices; that, within a few days after the first Regal station opened, the retail price in Portland had dropped 4 cents per gallon; and that this precipitated a price decline throughout the Pacific Northwest (Br. 16-17<sup>2</sup>). Petitioner further states that all of this was due to "the price and price-related discriminations which Signal received from Standard and passed on to its subsidiary, Western Hyway, and then to Regal, Western Hyway's subsidiary" (Br. 17).

Not one of the record references cited by petitioner supports the statement that a price discrimination by Standard precipitated a price war or caused any injury to petitioner.

---

2. As used herein, "A," refers to the Appendix to petitioner's and respondent's briefs: "Pet." to the petition for writ of certiorari; "R." to the clerk's transcript of record in the court of appeals; "Tr." to the trial transcript; "Br." to petitioner's brief; and "Exh." to exhibits. Exhibits Nos. 1 through 429 were offered by petitioner and Exhibits 1,000 and upward by respondent.

On the contrary, the record shows that at the time the first Regal station opened, and for more than two months thereafter, Standard's price to Perkins was *lower* than its price to Signal (p. 21, *infra*). At no time thereafter did Signal ever have a favorable price differential over Perkins of more than 45 one-hundredths of a cent (except for two days at 68 one-hundredths of a cent) (*ibid.*). There is no evidence that even these small differentials were ever "passed on to Western Hyway, and then to Regal." Indeed, the only evidence is to the contrary (*infra*, p. 22, and note 23; p. 27, and note 25).

Petitioner states that the important question "whether Signal passed on to Regal its price advantages" was "properly submitted to the jury and resolved in favor of petitioner" (Br. 54). The fact is that this question was not submitted to or passed upon by the jury. Indeed, the court refused to give respondent's instructions which would have submitted to the jury "the passing on" issue (A. 96-97; A. 458).

Petitioner states that there was substantial evidence that Standard "discriminated in price in favor of its Branded Dealers and against Perkins" (Br. 13); that "Branded Dealers, who were retailers, often purchased gasoline from Standard at lower net prices than Perkins" (Br. 15); that "[a]ll aspects of petitioner's business were drastically affected" by Standard's price discrimination in favor of "its Branded Dealers in the Pacific Northwest" (Br. 20); and that "Standard's price discrimination" in favor of its branded dealers "occasioned many persons to cease purchasing gasoline from customers of Perkins" (Br. 21).

Not one of the record references cited by petitioner supports these statements.

The fact is that during the entire claim period of almost



three years not one of Standard's numerous dealers in the 33 localities where Perkins sold gasoline ever paid a lower price for gasoline than Perkins, except for one inconsequential incident.<sup>3</sup> There is no evidence in the record that a single person ever ceased purchasing gasoline from Perkins or customers of Perkins on account of Standard's prices to its dealers (*infra*, p. 14, note 12; p. 48).

Petitioner states that in Centralia "Signal had passed the benefits of Standard's price discriminations" to "retail stations" (Br. 14), and that this initiated a severe price war. Not one of the record references cited by petitioner supports this statement. There is no evidence that Signal, or a customer of Signal, ever sold to a retail station in Centralia or precipitated a price war there (p. 19, and notes 19, 21, *infra*).

Petitioner states that "retailers purchasing Standard gasoline through Signal" had received from Standard "numerous other benefits" (Br. 13) and "price-related discriminations" (Br. 13, 17) not made available to Perkins. Petitioner does not advise this Court that the trial court specifically withdrew from the jury all questions concerning Signal except the single issue of price discrimination (A. 47; see p. 13, note 13, *infra*).

Petitioner states that Regal "advertised that they accepted major oil company credit cards and touted their gasoline as a 'Major Brand'" (Br. 16) and complains that Standard prohibited Perkins from indicating that his product came from a major oil company (Br. 18). The trial court, referring to the advertisement by Regal that it sold major brand gasolines and would accept all major credit

---

3. During a local price war in the town of Centralia, Washington—long before Regal ever entered the market—five dealers in one price zone in the town had a price advantage on one grade of gasoline of one cent per gallon for a period of one week (p. 13, *infra*).

cards, instructed the jury to disregard such testimony "because it is not relevant to any issue before you in this case" (A. 70).

Hereinafter we correct other misstatements in petitioner's brief.

### 3. The facts.

#### A. STANDARD

Standard is an integrated oil company in that it produces and refines crude oil and markets refined products. Its principal market is on the West Coast, which includes the areas in which Perkins operated in Oregon and Washington. In these areas Standard sold its gasoline to Signal, to rebrand jobbers including Perkins, to independent retail dealers using Standard's brands<sup>4</sup> and to the motoring public through its company-operated retail stations.

#### B. SIGNAL

Signal, like Standard, was an integrated oil company (Br. 8). It produced crude oil, operated a refinery and marketed gasoline throughout the Western states (A. 411-412). By 1931, Signal's gasoline market had grown to about two million gallons of gasoline a month, which was the maximum its refinery could produce (A. 412). However, it had an excess of crude oil, and in 1932, to obtain additional gasoline, it entered into agreements with Standard under which it supplied crude oil to Standard and, at the same time, purchased its gasoline requirements (Tr. 5443-5445).

---

4. Standard's brand names were Chevron and Signal. Standard's Signal dealers had no connection with Signal Oil and Gas Company. Signal Oil and Gas Company was wholly independent from Standard. The brand name "Signal" as applied to petroleum products was acquired by Standard from Signal Oil and Gas Company along with certain retail facilities in 1947 (A. 417-419). "Signal" in this brief always refers to Signal Oil and Gas Company.

These agreements were renewed in 1937 (A. 413) and again in 1947, at which time Standard agreed to supply Signal's gasoline requirements throughout the states of California, Oregon, Washington, Arizona, Nevada, and Idaho (Exh. 1007).

The arrangement was, in effect, a crude oil processing arrangement under which Standard took Signal's crude oil and returned to Signal a portion of the gasoline contained therein (A. 417-418). As Signal's deliveries of crude oil increased, Standard was obligated to return increased quantities of gasoline (A. 418; Exh. 1007).<sup>5</sup> The contract term was for six years and, thereafter, it became terminable by either party upon six months' notice given after July 1, 1953 (Exh. 1007).

In March 1955, Signal sent notice to Standard that it could purchase from 12 to 18 million gallons per month from a major competitor at discounts off posted price of 5 cents for regular and 6 cents for ethyl (A. 423). Its discounts from Standard were 4.5 cents on regular and 5.5 cents on ethyl. In December, 1955, Standard submitted to Signal a proposed new contract, but Signal refused to accept because it had received lower price offers from other major suppliers (A. 425-426). In March, 1956, Signal advised Standard that suppliers of major company products were offering gasoline at points as far north as Eugene, Oregon, for prices lower than those charged Signal by Standard (Exh. 1705; A. 426-427), and requested an adjustment to meet these competitive prices (A. 428; Exh. 1705, A. 651).

5. To determine the quantity of gasoline Standard was obligated to deliver to Signal, the gasoline content of the crude oil was deemed to be approximately 30 per cent (A. 418; Exh. 1007). By 1945 Signal was supplying Standard with 40,000 barrels of crude oil per day (A. 413-414).

In the summer of 1956, Standard learned that Union Oil Company of California was negotiating to get the Signal business by undercutting Standard's prices (A. 429-430) and, in fact, Union already had commenced gasoline deliveries to Signal in Arizona (Exh. 1703, A. 649). Shortly thereafter, Western Hyway Company, a customer of Signal, received offers from other suppliers at prices lower than those charged by Signal (A. 430-431), and Signal decided to buy gasoline from competitors of Standard where available at a lower price (A. 430). Eventually, to retain this business, Standard in January, 1957, lowered its gasoline prices to Signal in an amount less than Signal was demanding. The new formula provided for a reduction in contract prices not to exceed three quarters of a cent per gallon (A. 433-436; Tr. 5497-5501, 5503-5504). The arrangement applied equally throughout the states of Washington, Oregon, California, Arizona, Nevada and Idaho in which Standard was then obligated to furnish Signal with gasoline (A. 433, 435).<sup>6</sup> This overall adjustment, required by the lower prices of competitors, had no predatory element as to any customer, and, particularly, none as to any customer in Washington and Oregon. Until this time, Standard for almost a year had sold gasoline to Perkins in the Northwest at a lower price than Signal paid under its six-state contract (Exhs. 1448, 1007). After the price adjustment to Signal, its prices were lower than Standard's

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6. At the time of the adjustment in January 1957, a sum was agreed upon and paid by Standard to Signal upon the basis of \$.0052 per gallon of gasoline sold to Signal in the six-state area during the period March 1 through June 30, 1956, and on the basis of \$.0065 per gallon from July 1 through December 31, 1956 (A. 424-425, 433; Exhs. 23H, A. 504, 1550B, A. 631, 1550B-1, A. 632). Signal had no knowledge in 1956 that such a payment would be made in 1957 (A. 433); nor did it pass this payment on to its customer Western Hyway (Exhs. 1458A, 1550, p. 21, n. 22, *infra*).



prices to Perkins by amounts varying from 36 one-hundredths to 45 one-hundredths of a cent, except for two days when the differential was 68 one-hundredths of a cent (Exh. 1550, *infra*, p. 21, note 22).<sup>7</sup>

Throughout 1957, Standard continued its attempts to negotiate a firm contract with Signal (A. 436). But in that year, Signal purchased millions of gallons from Union Oil Company, and Standard offered documentary evidence, which the trial court rejected, showing that Union's prices were lower than Standard's prices to Signal.<sup>8</sup>

By the end of 1957, because of lower prices offered by competitors, gasoline sales by Standard to Signal had dwindled to about a third of what they had been earlier in the year (Tr. 5531-5532, 5536; Exh. 1710, A. 656). Standard decided to terminate its agreement with Signal (A. 439-440), and, about the same time, Perkins terminated his contract with Standard and entered into an agreement to ~~purchase gasoline from~~ <sup>lease his stations to</sup> Westway, a subsidiary of Union.

7. Petitioner criticizes respondent for minimizing the price discrimination in favor of Signal of "more than \$1 million, a substantial portion of which was directly allocable to Signal's purchases in the Pacific Northwest" (Br. 54). The "substantial portion" allocable to Signal's sales in Portland—the only sales involved—was 3.8% (A. 449). Moreover, even a figure of \$38,000 overstates the total *differential* for the year and a half involved. The \$1 million figure represents the total difference between Standard's old and new prices on all of the products it sold to Signal during that period in the entire six-state area. The *differential* between Perkins' price and Signal's price was less, per gallon, than the price change, per gallon, because Perkins enjoyed a price advantage over Signal before the price change (p. 9, *supra*; p. 21, *infra*).

8. The district court rejected Exhibits 1694-1702 (A. 638-648), 1708 (A. 654), 1713 (A. 658) and 1714 (A. 660), which were Union's business records showing sales by Union to Signal at prices below those offered by Standard (Tr. 5201, 5539-5541). The documents were offered to corroborate the prior notice by Signal to Standard of lower competitive offers and as direct evidence of Union's prices. The court of appeals held that the district court's rejection of these exhibits was error (see A. 116-117).

### C. WESTERN HYWAY COMPANY

Western Hyway was not a "trucking company" as petitioner states (Br. 9), but a wholesale distributor of petroleum products which it sold to retailers, sub-distributors and jobbers (A. 395). Western maintained a marine terminal on the Sacramento River from which it distributed products in central California, western Nevada and southern Oregon (A. 392).

Signal sold Standard gasoline to Western in Portland, Oregon, where Western was Signal's only customer (Tr. 544, 545). The gasoline was picked up at Standard's Will-bridge plant and was sold to three Regal stations in Portland (A. 395). Western's only customers relevant to this case were these three Regal stations.\*

Sixty per cent of Western's stock was owned by Signal and forty per cent by corporate officers of Western (A. 393). There was no evidence of common directors or officers between the two companies or that Signal exerted any operational control over Western. Commencing in 1955, Western purchased gasoline from suppliers other than Signal. By 1957, these purchases, which deprived Signal of its "wholesale profit" (Exh. 1711, A. 657), amounted to more than 50 per cent of Western's total volume (A. 210-211; Exh. 1458D).

### D. REGAL STATIONS CO.

Regal Stations Co. (Regal) was organized as an Oregon corporation in 1956; Western owned a fifty-five per cent stock interest in Regal; the remaining forty-five per cent was owned by five individuals who had no relationship

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9. Western Hyway also made some sales of this gasoline to a Fortune station in Salem (A. 393-394). Since the Perkins corporations did not market in Salem, the trial court excluded claims based on Fortune stations (A. 69-70).

with Western (A. 393). Regal operated three service stations in Portland (*ibid.*).<sup>10</sup> The first Regal station opened in Portland in September 1956 (Exh. 1683), the second in December of that year and the third in January 1957 (Tr. 528).

Regal introduced marketing methods which were entirely new in Portland and the Northwest. It opened large, clean, well-advertised multiple-pump stations situated on corner sites with maximum access to the motoring public (Exhs. 106C, A. 559, 106D, 106E); it adopted large supermarket techniques (A. 223, 230, 244, 258, 276-277, 287; Tr. 790, 1240-1241, 2209-2210); used "many, many pumps" (Tr. 790; sold kitchen utensils and other merchandise (Tr. 1240-1241); gave premium stamps and raffle tickets (A. 226-227, 265, 276; Tr. 790); emphasized volume sale of gasoline rather than other products and services normally offered by a retail station (Tr. 1241); and charged low prices (A. 229). In short, Regal did "an excellent job" of advertising, promotion and merchandising (A. 223; Tr. 980). Perkins said "it was entirely new from anything we had ever seen before" (Tr. 1241). Perkins' nephew, a distributor in Vancouver, said Regal was a new "much more glamorous type of operation" (Tr. 790).

#### **E. STANDARD'S BRANDED DEALERS**

Standard's branded dealers were independent operators of retail stations who marketed Standard's gasoline and petroleum products under Standard's brand names. Standard normally supplied its dealers at Standard's posted

10. From time to time, there had been a number of companies which used the brand name "Regal" (see, e.g., A. 205-209). At the time of trial there were only three (A. 209). This case concerns only one—Regal Stations Co.—which operated three stations in Portland and which was the only company which used the Regal brand in the Northwest (A. 209; Tr. 4776, 4778).

tank truck prices (A. 197; Exhs. 24BBB, 24CCC, 1511A, 1511B). The dealers established their own retail prices (Tr. 480, 4913, 4918, 4938). Prices at so-called "minor" or "independent" service stations, such as Perkins' "Champion" stations, were usually about two cents per gallon below the retail price for major brands (A. 223, 227, 204, 264; Tr. 792). Standard's price to Perkins, as a jobber who in turn sold to dealers, was normally 4 to 5½ cents less than its price to its own branded dealers (A. 588-604; Exh. 1448).

It was Standard's policy to grant price assistance to its dealers in a given locality when retail prices at competitive *major* brand stations declined during price wars (Tr. 4915-4917, 4937, 4941-4942; Exhs. 1453A, 1453B). Standard's retail price assistance to its dealers was a temporary day-to-day price reduction. During the claim period (March, 1955-November, 1957), such assistance was given at one time or another in only seven of the 33 localities in which Perkins had customers. (Exhs. 81A-81XX, summarized in Exhs. 1523A-1523CC, A. 622, 623).<sup>11</sup> With one immaterial exception, Perkins always had a price advantage over Standard's dealers (Exhs. 1456A, 1457A, 1463, 1467, 1477-1483, 1485, 1488-1491, 1493-1495, 1497, and 1500, which are depicted in graphs at A. 588-604). The exception occurred during a price war in the town of Centralia, Washington, when five of Standard's dealers, for one week only, paid one cent less on regular (but not on premium) gasoline than the

11. Centralia, Washington (1523L-M; A. 616-617; 1523X-CC, A. 625-630); Portland (1523A-C, A. 605-607), Albany (1523D-F, A. 608-610), Grants Pass (1523K, A. 615; 1523S-T, A. 622-623), Roseburg (1523H-I, A. 612-613; 1523P-R, A. 619-621), The Dalles (1523W, A. 624) and Winston (1523J, A. 614), Oregon. The price to Perkins compared with the tank truck price less price assistance ("subsidy") to Standard's dealers in these and other localities are shown on graphs (A. 588-504).



price paid by Perkins (Exhs. 1448, p. 10, 1497, 1450W, 1450Y, 1523X-1523Y, 1523BB, A. 625-629).<sup>12</sup> There is no evidence that Perkins or any of his customers lost any sales to Standard's dealers in Centralia during this week.

Standard's branded dealers made sales on Standard's credit cards and could earn an allowance of one-quarter cent per gallon for maintaining clean restrooms.<sup>13</sup>

12. Petitioner misstates the record when he asserts that "there was substantial evidence from which the jury could have found that Standard also discriminated in price in favor of its Branded Dealers and against Perkins" (Br. 13). Of the 12 record references cited in support of this assertion one is the statement in the opinion below which merely recites petitioner's contention (A. 106-107); one (A. 247) refers to the testimony of a dealer in Roseburg who recalled that sometime during a price war between May 1956 and January 1957, he received 7 cents per gallon price assistance, but admitted he could be wrong when, shown that Standard's records for his station showed a price assistance of 7/10 of a cent, rather than 7 cents, on July 15, 1957 (Tr. 640-641; Exhs. 811, 1453-R); the remainder of the exhibit and transcript citations refer to the fact that Standard generally extended price assistance to its branded dealers in localities where there were price wars. In not one of these record references is there any evidence that the net price to dealers was less than the price to Perkins, except for the immaterial incident referred to in the text.

Petitioner also misstates the record when he says that price discriminations in favor of Standard's dealers "occasioned many persons to cease purchasing gasoline from customers of Perkins" (Br. 21). There is no evidence that any Standard dealer ever diverted trade from Perkins or any of his customers. Two of the record references (A. 239, 240; Tr. 588) cited in petitioner's brief (p. 21) concern a loss of trade by a Champion dealer to a Shell dealer who at unspecified times bought unspecified quantities at unspecified prices from a Standard commission agent (A. 241). The remainder likewise make no mention of a Standard dealer but refer to patronage of a Regal station and to purchases by a Perkins distributor from Pennco, a company having no connection with Standard.

13. Petitioner states that there was "substantial uncontroverted evidence" that "the Branded Dealers and other retailers purchasing . . . through Signal had received from Standard numerous other benefits (such as advertising allowances) which had not been made

**P. PERKINS**

In 1945, Perkins, together with Robert Harris and Lee Powell, entered into a petroleum products supply contract with Standard. This agreement was superseded by a new one in April 1953 (Exh. 2, A. 493) and this, in turn, by another in July 1956 (Exh. 102, A. 549).

In 1952, Perkins transferred his business to two corporations (Tr. 166, 169; Exhs. 403, 422, 423, 425, 428). These were Perkins Oil Company of Oregon and Perkins Oil Company of Washington.<sup>14</sup> While Perkins personally retained ownership of his service stations and bulk plants, he leased them to the corporations at flat monthly rentals except for

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available to Perkins' retail stations or the retail stations supplied by him" (Br. 13).

The statement is not correct. There is no evidence that Signal sold to any retailer. The record references cited (Br. 13) do not support the assertion. Exhibit 2 (A. 493) is Perkins' contract with Standard. Exhibit 106 (see A. 559)<sup>15</sup> is a group of photographs of the Regal stations. Each of the transcript references merely refers to retail price assistance to Standard's branded dealers.

The trial court, referring to the advertisement by Regal that it sold major brand gasolines and would accept all major credit cards, instructed the jury that there is no evidence in the record from which it could find that Standard approved of such advertisements, had any direct dealings with Regal or had anything to do with the method of advertising used by Regal (A. 70). It instructed the jury to disregard such testimony "because it is not relevant to any issue before you in this case" and "has no bearing on any issue before you \* \* \*" (A. 70).

The reference to "Perkins' retail stations" is erroneous. Perkins operated only one station (A. 487; Tr. 1241-1242).

There is no evidence in this whole record of any service or facility, other than the restroom allowance and credit card service, which Standard extended to any of its dealers except for the testimony of one dealer who did not operate in any area where Perkins had a customer. He testified that Standard once painted his station and that on one occasion he received an advertising allowance of one tenth of a cent per gallon up to 50 per cent of his actual advertising bill (A. 219). He did not say whether or not Standard owned the station or held the prime lease on it.

14. Throughout this brief, unless otherwise stated, "Perkins" refers to Clyde A. Perkins and the two Perkins' companies.

one or two which were leased to dealers (Exhs. 424, 426, 427; A. 133-134, 155-156, 157, 168; Tr. 1315, 1382-1383). The corporations, in turn, sublet the stations to operators, except for the one station in Vancouver, Washington (A. 487; Tr. 1241-1242).

In 1953, Perkins on the one hand, and Harris and Powell on the other, divided the marketing territory between them (Exhs. 4A, 4B; A. 163-165). The territory assigned to Perkins was roughly southwestern Washington and portion of western Oregon (Exh. 1449, A. 587). Portland and the county in which it is situated (Multnomah) were taken by Powell and Harris.

Within his territory Perkins operated as a jobber, which he defined as "one that buys merchandise from another company and resells it under his own brand to distributors or to service stations or to commercial accounts" (A. 128). Standard had four other jobbers (exclusive of Signal) in the Northwest, three of which were substantially larger than Perkins.<sup>15</sup> Perkins and other jobbers supplied by Standard had their own brand names (Perkins' was "Champion"), their own facilities, their own plants, their own means of distribution, and had developed their own relationship with their retail and other outlets (Tr. 996-997). As jobbers performing these functions, the price to them was from 4 to 5½ cents lower than that normally paid by Standard's branded dealers (e.g., Exhs. 23-H, A. 504, 1448). Perkins operated one retail station in Vancouver, Washington (A. 487; Tr. 242). Standard did not extend the ¼ cent restroom allowance or credit card service given to

15. Washington Cooperative Farmers Association, Trues Oil Company, Truax Oil Company and Clipper Oil Company (Exh. 23-H, A. 504). Perkins claimed price discriminations in favor of these jobbers, but the court withdrew the claims from the jury for lack of evidence (A. 46).

its own dealers to Perkins for this station. However, Perkins bought his gasoline for this station at the jobber's discount of 4 to 5½ cents.<sup>16</sup> In addition, Standard occasionally gave Perkins and other jobbers special allowances or "subsidies" because of competitive market situations (e.g., Exhs. 1311A-1311E, 1414-1416, 1448).

While Perkins' sales declined during the years 1955 through 1957 (Br. 20) other jobbers purchasing at comparable prices from Standard in the Northwest increased their sales: Trues Oil Company (Exh. 23-H, p. 22) Washington Cooperative Farmers Association (Exh. 23-H, p. 24) and Powell and Robert Harris (Exh. 23-H, p. 10, A. 518). The latter two were supplied by Standard under the same contract as was petitioner (Exh. 23-H, A. 504).<sup>17</sup>

16. At page 7 of his brief, petitioner refers to "approximately 60 retail stations . . . leased or operated by petitioner," and, at page 11, says that Standard's branded dealers "competed with petitioner's retail stations and the retail stations supplied by him." The implication that petitioner operated extensively at the retail level is inaccurate. None of the record references cited show that petitioner operated any station other than the one at Vancouver. Petitioner did first testify that he operated a retail station at Astoria, Oregon, through an employee or partner (A. 158; Tr. 1575, 1591). However, when the corporate records were produced, they showed that the station was an account of the Oregon corporation (Exh. 284A, A. 563) and that petitioner leased the station for a flat monthly rental (Tr. 2727-2728).

17. Petitioner's statement that before 1955 he "enjoyed growth and financial success" (Br. 20) is at odds with his own chart of his sales operations submitted to the court of appeals (p. 45, Br. of Appellee; see p. 35-36, note 35, *infra*). That chart shows that Perkins' jobber operations had sustained continuous losses since 1953. There was a greater decline (approximately 26%) in Perkins' gasoline sales during the two years before Regal opened and allegedly ruined his business (1954 and 1955) than during the next two years (about 13%) which encompassed Regal's operations (1956 and 1957).

In the court of appeals, Perkins attempted to explain the 1954 decline in part by stating that Standard in that year supplied one of his customers directly (Brief of Appellee, p. 43). (FOOTNOTE CONT. NEXT PAGE)



In November 1957, Clyde Perkins terminated his contract with Standard and leased or subleased his service stations to Westway Petroleum Company, a subsidiary of Standard's competitor, Union (Exh. 1003). His personal status as a landlord remained unchanged. Under the new agreement, Westway replaced Standard as the supplier of gasoline sold through Clyde Perkins' stations.

#### **G. THE RELEVANT SALES AREAS AND PRICES**

Perkins operated in three disconnected areas in southwestern Washington and western Oregon, extending generally from Olympia south to the California border, as the map reproduced at A. 587 shows. In this territory he distributed Standard's gasoline and fuel oil under his own brand name in 33 localities (Exhs. 284A, 284B, A. 563). In his brief (Br. 14-18), petitioner refers to two areas, first, Centralia and Seattle, Washington, and second, Vancouver, Washington, and Portland, Oregon.

##### **I. CENTRALIA AND SEATTLE, WASHINGTON**

Centralia is a small town about 83 miles south of Seattle. We discuss it in some detail only because petitioner emphasizes it in his brief (e.g., Br. 14-15, 18), and because it is the basis of the one claim of injury from sales to Signal not involving Regal.

Standard first began to supply Signal in the Northwest in 1955, when Signal commenced liftings of gasoline at Standard's terminal near Seattle (A. 203). Perkins, on the

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To support that statement, he referred the court to *Perkins v. Standard Oil Company* (1963) 235 Or. 7, 383 P.2d 107, 1002. The claims made in that case for loss of the account were not "settled" as stated in petitioner's brief (Br. 46, n. 34). Perkins in fact dismissed that case with prejudice before trial without the payment of any consideration.

other hand, did not buy from Standard in Seattle (Exhs. 2, A. 493; 1448, p. 14), and there is no evidence that he marketed Standard gasoline there. Rather, in Seattle he bought gasoline from Westway, a subsidiary of Union (Exhs. 235, 1459A). Signal resold all of the gasoline it lifted from Standard in Seattle to various jobbers, including one B. F. Harris, a distributor in Seattle.<sup>18</sup> In Centralia, Perkins supplied one Les Carter with gasoline purchased from Standard. There was no evidence<sup>19</sup> that Signal sold gasoline to anyone in Centralia, directly or indirectly.<sup>20</sup> Therefore nothing in regard to Centralia is of relevance to petitioner's claims resulting from Standard's sales to Signal.<sup>21</sup>

18. Petitioner refers to B. F. Harris as a "trucker" (Br. 14). But the evidence was that B. F. Harris was a jobber who bought and sold petroleum products (Tr. 1048, 1051, 1055), operated storage facilities (Tr. 1047, 1051) and service stations (Tr. 1048-1049) as well as tank trucks to service these facilities (Tr. 1052). B. F. Harris should not be confused with Robert Harris, with whom petitioner, along with Powell, signed the supply agreement with Standard.

19. The categorical statement in the text does not require qualification because of the following: B. F. Harris, who was supplied by Signal, testified that he could recall no sales in Centralia, but if there had been "it was some infinitesimal quantity that didn't amount to anything" (A. 283). Petitioner says Signal entered the Centralia market as a wholesaler (Pet. Br. 14), but the cited record references do not support the assertion. Allen Perkins, son of Clyde Perkins, testified he observed "deliveries" to Carter in Centralia from Seattle but did not specify that the deliveries were gasoline or that they came from Signal or Harris (Tr. 2988, 3080-3081) (see also note 20, *infra*).

20. Petitioner says that Signal's lower price to a "trucker"—which could only refer to B. F. Harris—enabled the trucker in Centralia to take away the business of some customers of Perkins. This is incorrect. Perkins (selling gasoline bought from Westway, not Standard) did compete with Harris for Carter's business—but in Seattle (Tr. 1689-1690; Exh. 235), not Centralia. And in fact Perkins lost the Carter account in Seattle not to Signal or a Signal-supplied jobber, but rather to Westway (Exhs. 235, 1504A).

21. Petitioner states that price wars were initiated in Centralia by retail stations "to which Signal had passed the benefits of

As to Standard's sales to its branded dealers in Centralia, we already have noted that the record shows that for one week in October 1956, five such dealers had a price advantage on one grade of gasoline of approximately one cent over Perkins (p. 13, *supra*). There was no evidence that Perkins or any of his customers lost trade to those dealers.

## II. VANCOUVER, WASHINGTON, AND PORTLAND, OREGON

Vancouver, Washington, where Perkins operated, is just across the Columbia River from Portland, Oregon, where Regal operated. In Portland, gasoline was sold at retail by eight major oil companies (Tidewater, Richfield, Shell, Texaco, Union, Mobil, Enco (Standard of New Jersey) and Standard) and by some 156 independent stations selling various brands (Tr. 4917; Exh. 1683). As petitioner and his witnesses acknowledged, there were constant price wars there, beginning as early as 1953 (A. 327; Tr. 4923-4924), two years before Standard sold any gasoline to Signal in the Northwest. These price wars continued to the time of trial in 1963, (Tr. 973-974), six years after Standard stopped selling to Signal. Perkins' marketing expert thought the continuous price wars were not attributable to any particular retailer or chain of retailers, but rather to a variety of factors including a surplus of gasoline resulting from the termination of the Korean War and the subsequent expansion of refining facilities (A. 277-279).

Signal began purchasing gasoline from Standard's Willbridge plant, near Portland, on August 27, 1956 (Tr. 4318;

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Standard's price discriminations in its favor" (Br. 14, citing Tr. 1282, 1313-1316 and 1341). The designated testimony makes no reference whatsoever to Signal's passing on a price advantage. Elsewhere in the record petitioner testified that he told his manager to meet the price of Signal (Tr. 1313). However, neither this testimony nor that cited supports the proposition that Signal or any customer of Signal supplied any retail stations in Centralia.

Exhs. 1550A<sup>1</sup> through 1550A-4). It sold this gasoline to Western Hyway, which in turn sold to the three Regal stations in Portland. When Regal opened in Portland in September 1956, Perkins was buying gasoline from Standard for his market in Vancouver at a *lower* price than Signal was paying. Beginning in January 1957, Signal, as a result of the amendment to its over-all contract with Standard, had a price advantage over Perkins of from thirty-six one-hundredths to forty-five one-hundredths of a cent per gallon (and for two days, sixty-eight one-hundredths of a cent).<sup>22</sup>

22. Exhibit 1550 compares the prices Signal and Perkins paid Standard for gasoline resold in the Vancouver-Portland area:

Date	Signal Oil and Gas Company Net Prices		C. A. Perkins Net Proceeds Payable to Standard at Willbridge—Destination — Vancouver — Ex Tax —		Difference Between Signal Oil and Gas Company Net Prices and C. A. Perkins Net Proceeds	
	Regular	Ethyl	Regular	Ethyl	Regular	Ethyl
*8/27/56-12/31/56	.129	.149	.1262	.1462	.0028	.0028
1/ 1/57- 1/16/57	.1224	.1424	.1262	.1462	(.0038)	(.0038)
1/17/57- 3/18/57	.1274	.1474	.1312	.1512	(.0038)	(.0038)
3/19/57- 3/25/57	.1274	.1474	.131035	.151035	(.003635)	(.003635)
3/26/57- 3/31/57	.1274	.1474	.131035	.151035	(.003635)	(.003635)
4/ 1/57- 4/ 2/57	.1272	.1472	.131035	.151035	(.003835)	(.003835)
4/ 3/57- 6/17/57	.1292	.1512	.133035	.155035	(.003835)	(.003835)
6/18/57- 6/21/57	.1292	.1512	.133035	.155035	(.003835)	(.003835)
6/22/57- 6/23/57	.1292	.1512	.136035	.158035	(.006835)	(.006835)
6/24/57- 6/30/57	.1322	.1542	.136035	.158035	(.003835)	(.003835)
7/ 1/57-11/20/57	.1315	.1535	.136035	.158035	(.004535)	(.004535)
11/21/57-12/ 2/57	.1315	.1535	.13587	.15787	(.00437)	(.00437)

\*Date of first delivery to Signal Oil and Gas Company at Willbridge.

In January 1957, a payment was agreed upon and made by Standard to Signal Oil and Gas Company upon the basis of \$.0065 per gallon of gasoline delivered by Standard to Signal Oil and Gas Company during the period 8/27/56 through 12/31/56.

Contrary to petitioner's statement (Br. 53, note 37), neither petitioner's Exhibits 93 I, M and N (A. 546-547), nor any other evidence, casts doubt either on the accuracy of Exhibit 1550 or the validity of its use to compare Perkins' and Signal's prices. Exhibit 1550 correctly sets forth prices to Perkins f.o.b. Willbridge for deliveries to Vancouver and compares them to Standard's prices to Signal f.o.b. Willbridge. Petitioner's Exh. 93 I (A. 546), and its



From the day Regal first opened in September 1956, until June 22, 1957, Western, the wholesaler supplying Regal, paid *higher* prices to Signal for the gasoline resold to Regal than Perkins paid to Standard for the gasoline he wholesaled to his customers. Thereafter, until the end of the claim period on November 1, 1957, Western's price advantage over Perkins, at the wholesale level, was thirty-five ten-thousandths of a cent, except for the last three weeks that Perkins was in business, when Western's price advantage was about one tenth of a cent.<sup>23</sup>

There is no evidence in the record of the price at which Regal purchased gasoline from Western.

replica, 82D (A. 530), merely reflect a price to Perkins f.o.b. Willbridge for deliveries without freight allowance. Those exhibits eliminate freight allowances of 33 to 36 hundredths of a cent per gallon which Perkins concedes were deducted from the purchase price he paid on deliveries to Vancouver. As to these facts, there is no conflict of record. Indeed, petitioner offered as his own exhibits (Exhs. 354-A-Y) Standard's schedules (Exhs. 1450B-Z), showing Standard's price and freight allowances on gasoline, including the price f.o.b. Willbridge, destination Vancouver (Exh. 1450-S), compared on Exhibit 1550 above (Tr. 6045-6046).

23. The following chart shows the prices paid by Perkins (to Standard, destination Vancouver) and by Western (to Signal):

Date of Change	Ethyl		Regular	
	Standard's price to Perkins, destination Vancouver(1)	Signal Oil and Gas Company's price to Western Hyway(2)	Perkins payable to Standard, destination Vancouver(1)	Signal Oil and Gas Company's price to Western Hyway(2)
8/27/56	14.62	15.30	12.62	13.30
1/17/57	15.12	15.30	13.12	13.30
1/24/57	15.12	15.80	13.12	13.80
3/19/57	15.1035	15.80	13.1035	13.80
4/ 3/57	15.5035	15.80	13.3035	13.80
4/15/57	15.5035	15.80	13.3035	13.60
6/22/57	15.8035	15.80	13.6035	13.60
11/ 1/57	15.8035	15.70	13.6035	13.50
11/21/57	15.787	15.70	13.587	13.50

Source: (1) Exh. 1550.

(2) Exh. 1458-A.

#### 4. The decision of the court of appeals.

The court of appeals reversed the judgment for petitioner and remanded the case for a new trial. It held that a substantial portion of the award rested on the activities of Regal and that no claim of damage could be based on that company's activities, since it was neither a customer of Standard nor a customer of the favored purchaser from Standard (A. 108-109).

The court of appeals further held that it was error to submit to the jury Perkins' claims of Standard's alleged violations of Sections 2(d) and 2(e) with respect to branded dealers to the extent that Perkins operated as a wholesaler, leaving Perkins free on retrial to show damages for such violations, if any, to the extent he operated as a retailer (A. 103-104, 111-112).<sup>24</sup> It further held that certain damage items of Perkins as an individual were erroneously submitted to the jury (A. 112-115), and that the trial court erred in admitting damage computations which were misleading and not supported by the evidence (A. 115-116). It also held that the trial court erred in the exclusion of evidence and in its instructions to the jury relating to respondent's "good faith meeting of competition" defense (A. 116-117). Finally, the court of appeals adverted to numerous other errors urged by respondent which it said it would not pass upon for the reason that it felt that such errors were not likely to occur in a new trial. The court expressly stated that its failure to discuss these errors was not to be taken as appellate approval of the rulings complained of (A. 117).

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24. On this point we simply do not understand petitioner's assertion that the court below found no error at all involving Perkins' §§ 2(d) and 2(e) claims (see Br. 24).

**SUMMARY OF ARGUMENT****I**

Petitioner's basic contention is that the court of appeals, in denying recovery for Regal's acts, erred in applying the Robinson-Patman amendments, which do not extend to fourth-line competition. Rather, petitioner argues, the court should have applied the competitive effects standard retained from the original provisions of Section 2(a) of the Clayton Act.

At the outset, we point out that it is immaterial which provisions of the Act are relied upon. The small price differential in favor of Signal was not passed on and had no effect upon competition with Regal or upon competition in general. Further, there was no price advantage in favor of Standard's branded dealers, save for one immaterial incident when, for one week in one price zone in one town, the price of one grade of gasoline to five dealers was 1 cent lower than the price to Perkins.

**II**

The court of appeals held that the Robinson-Patman Act did not apply to the alleged injury to competition with Regal, since Regal operated at the fourth level of competition. This ruling is required by the specific language of the statute, which makes actionable price discriminations affecting competition with "any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them." As this Court pointed out in *Federal Trade Comm'n. v. Sun Oil Co.* (1963) 371 U.S. 505, 514-515, Congress knowingly defined the levels of competition to which it intended the amendment to apply.

The specific language of the amendment is consistent with the congressional purpose. Congress intended to provide a less onerous burden of proof than that demanded by the

original Section 2 by requiring a showing of injury only to competition with particular competitors, rather than to competition in an entire market. The limitation of the levels of competition to which the Act was made applicable reflects a reasonable judgment that the impact of a price discrimination ordinarily may be expected to be felt, free of intervening factors affecting competition, by those no more remote than the third level of competition.

### III

In this Court, petitioner casts his principal argument in terms of the competitive effects provisions retained from the original Clayton Act, which makes actionable a price discrimination that affects competition in a line of commerce generally. Petitioner, however, did not raise that issue below and, therefore, the court below had no opportunity either to engage in meaningful market analysis or to assess this voluminous record in light of petitioner's contention. In any event, as we show in Part I of our argument, petitioner failed to prove that the price discrimination affected competition in general or with Regal.

### IV

Petitioner argues that the court below should have treated this as a second-line, rather than as a fourth-line case. The argument is premised upon two factual contentions: (1) that Perkins was in competition directly with Signal at the secondary level, and (2) that competition with Regal was actually competition with Signal since Regal was a mere tool of Signal. Neither of these contentions was proved. Petitioner and Signal were not competitors at the secondary level. They operated in entirely separate channels of distribution. Neither competed for the customers of



the other. The alleged competitive impact occurred at the retail level between customers of Perkins and sellers twice removed from Signal. It appears to be petitioner's theory that every non-primary line case is a secondary-line case, regardless of how far below the original purchasers the competitive impact may occur. This is contrary to the realities of the marketplace. It would also render superfluous the congressional delineation of the distinct levels of competition upon which the adverse impact must occur in order to found an actionable claim under the Robinson-Patman Act.

Respondent's second contention—that Signal controlled the prices of Regal—is simply without any factual foundation.

## V

In the final section of our brief, we advert to numerous other trial errors, some passed upon by the court of appeals and others specifically reserved by that court. We are constrained to discuss them to show their substantiality because of petitioner's request that the judgment of the trial court be reinstated should this Court determine the issues before it in petitioner's favor. These errors, we submit, preclude such relief.

## ARGUMENT

- I. **Lack of causation: Sales to Signal did not violate Section 2(a) because the price differential to Signal was not the cause of any effect on competition with Regal and was not the cause of a substantial lessening of competition in the market.**

Section 2(a) of the Clayton Act, in its original form and as amended by the Robinson-Patman Act, does not prohibit all price discriminations. It cannot be interpreted to require "price uniformity and rigidity in open conflict with

the purposes of other antitrust legislation" (*Automatic Canteen Co. v. F.T.C.* (1953) 346 U.S. 61, 63). Nor does a price discrimination alone support an inference of an adverse effect on competition. As this Court has recognized "there are no overtones of business buccaneering in the §2(a) phrase 'discriminate in price.' Rather, a price discrimination within the meaning of that provision is merely a price difference" (*F.T.C. v. Anheuser-Busch, Inc.* (1960) 363 U.S. 536, 549).

Only price discriminations which may have the "effect of" injuring competition are prohibited (15 U.S.C. 13(a)). Thus, in every Section 2(a) case a crucial element of proof is the causal connection or nexus between the price difference and the asserted competitive injury (Rowe, *Price Discriminations Under the Robinson-Patman Act* (1962) pp. 125, 186-203). Petitioner, of course, recognizes the need for such causal connection by repeatedly asserting (e.g., Br. 17, 27, 48) that Standard's price differential to Signal was "passed on" by Signal to Western and by Western to Regal. There is, however, no evidence in the record to support these statements.<sup>25</sup>

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25. In the absence of evidence of the prices paid by Regal, petitioner repeatedly refers explicitly (Br. 17, 19 and note 19, 54, 64, and 65) or implicitly (Br. 27, 48, 49-50) to his own testimony of a conversation between two Standard employees (see Br. 19, note 19, citing A. 189, 201). Petitioner testified that one employee said to the other "I want you to stop Regal *from going* to the Northwest . . . if they do they will wreck the market because they have got a better price than either Clyde or my other jobbers have up there, and if they come up there they *will* do the same thing there they have done other places." The second employee said "I can't control it [Signal]" (emphasis added).

The conversation obviously took place before Regal entered the market in the Northwest with gasoline purchased from Western and, of course, is not evidence of the price later paid by Regal. It simply shows that Standard could not control, and refused to attempt to control, Signal's resale customers or prices. In any event, the undisputed invoice evidence shows that Signal, during all of the

Accordingly, even if it be assumed that the merchandising and pricing policies of three Regal stations in Portland adversely affected Perkins wherever he operated, from Olympia, Washington, south to the California border, there is no evidence that Standard's price to Signal was the proximate cause of the acts of Regal or of any effect they may have had on Perkins. The court of appeals did not rule on this point. It recited the adverse effects of Regal's marketing practices but, significantly, did not find that there was a causal connection between Standard's price to Signal and Regal's prices or marketing practices.

In addition, the lower price to Signal—which did not start until January 1957, four months after Regal had opened its first station and precipitated the price wars—gave Signal an advantage over Perkins of from 33/100th to 45/100th of a cent per gallon, except for two days when it was 68/100 cents per gallon (Exh. 1550, *supra*, p. 21, note 22). Quite apart from the fact that this small differential was not passed on by Signal to Western, or by Western to Regal, it could not have been the cause of the 4-cent drop in Portland's retail prices (Br. 16), or of Regal's underpricing of Perkins' Vancouver station by 2 to 6 cents per gallon (A. 251-256; Tr. 657, 703-706, 709), or, *a fortiori*, of the ruinous price wars throughout Perkins' entire 55,000 square mile marketing area. As we have noted, years after Standard had ceased supplying Signal, the Regal stations were still operating in the same manner as that to which Perkins attributed his injury (A. 343; Exh. 106C, A. 559. Exhs. 106D and E)

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relevant period, charged Western either a higher price, or approximately the same price, as Standard charged Perkins. Thus, Signal in fact absorbed, rather than passed on, the small price advantage it had from Standard (Exhs. 1458A, 1550, *supra*, p. 21, note 22)

Significantly, petitioner at no place in his brief ever refers to the size of these differentials or seeks to explain how (even if they had been passed on to Regal as they were not) they enabled Regal to drive the price of gasoline down 4 cents a gallon (Br. 16), "to 'wreck' the Pacific Northwest market" (Br. 64) and to cause "Perkins' destruction" (Br. 63), and produced the "catastrophic" impact upon Perkins' theretofore "successful and expanding business" which drove it from the market (Br. 13).

Turning from the Regal situation, there was no evidence of any causal connection between Standard's price to Signal and Perkins' claimed injury in Centralia. Perkins' claim was that B. F. Harris, one of Signal's Seattle jobbers, was able to acquire a customer of Perkins, one Carter, in Centralia (83 miles south of Seattle) because of Standard's lower price to Signal. In fact, B. F. Harris did not market gasoline in Centralia (A. 282-283), and there is no evidence that Perkins lost the Carter account to Signal or to a customer of Signal (p. 19, notes 19 and 20, *supra*). Actually, during most of the relevant period of March to October 1955 (Exh. 235), Harris, the Signal jobber with whom Perkins was competing in Seattle (*not* Centralia), paid Signal a higher price for gasoline than Perkins paid to Standard for gasoline sold in Centralia (Exh. 1450W; Tr. 1061-1063).<sup>26</sup>

Turning finally to Standard's branded dealers, there was no evidence that Standard's treatment of them adversely

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26. The only specific evidence in the record of Signal's prices to B. F. Harris are invoices which show that during the 171 days in which Harris sold to Carter in Seattle, i.e., from March 2, 1955, to August 19, 1955, Perkins had a price advantage over Harris for 162 days on regular gasoline and 89 days on ethyl gasoline (Exh. 1450W; Tr. 1061-1063). Harris vaguely recalled that sometime during the many years he dealt with Signal he received additional adjustments but gave no testimony directly relevant to the time period here in issue (Tr. 1055, 1065, 1068-1069).



affected competition generally or Perkins individually anywhere in the Northwest. We discuss this later in this brief (p. 48, *infra*).

The court of appeals did not rule upon any of the issues relating to causation, which, we submit, are determinative of this case.

**II. Petitioner did not establish liability under the Robinson-Patman Act amendments to Section 2(a). These amendments do not extend to fourth-line competition, the level on which Regal operated.**

Standard sold gasoline to Perkins, a wholesaler. At the same time it sold gasoline to Signal, an integrated oil company, which in turn resold it to Western, a wholesaler, which in turn resold it to Regal, a retailer, which allegedly cut prices to the injury of petitioner. Thus, the alleged injury occurred at the fourth level of distribution—by a customer (Regal) of a customer (Western) of the favored customer (Signal) of the original seller (Standard).

The court of appeals ruled that a substantial part of the damages assessed in this case rested upon the marketing practices of Regal; that Regal was not a customer of a customer within the purview of Section 2(a); and that the effect exerted by Regal upon competition is not attributable to Standard under that section (A. 108-109). In so ruling, the court of appeals had reference solely to the Robinson-Patman amendments to Section 2(a).<sup>27</sup> We submit that its ruling is correct.

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27. The court below did not construe the provisions of Section 2(a) which were retained from the original Clayton Act and upon which petitioner principally relies because, as we show later (pp. 35-37, *infra*), no issue was presented below under these provisions. The court of appeals confined its decision to the "relevant provisions of the Robinson-Patman Act, relied upon by Perkins," which the court specifically delineated (A. 107, n. 3).

Section 2(a) of the Clayton Act (15 U.S.C. 13(a)), as amended by the Robinson-Patman Act, prohibits a price discrimination, the effect of which may be:

“• • • to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them • • •”

The proponents of the Robinson-Patman Act intended to provide a less onerous burden of proof than that demanded by the standard of Section 2 of the original Clayton Act (see Br. 55-56). Thus, the amendments require only a showing of injury to competition with specific competitors, rather than to competition in an entire market generally (see S.Rept. 1502, 74th Cong., 2d Sess., p. 4 (1936); H. Rept. 2287, 74th Cong., 2d Sess., p. 8 (1936); Hearings before a Subcommittee of the House Judiciary Committee on Bills to Amend the Clayton Act, 74th Cong., 2d Sess., p. 271 (1936) (statement of H. B. Teegarden)). But in an action brought under its provisions the plain language of the amendment requires that the discrimination relied on shall have caused an impairment of competition with the seller (primary-line), with the favored purchaser (secondary-line), or with customers of the favored purchaser (third-line).<sup>28</sup>

We know of no case in the thirty-three years since the Robinson-Patman Act added the above language, in which

28. In determining the relevant level of competition beyond the primary line, it is clear that one counts down the favored distributive chain. The act speaks of injury to competition *with* someone, and that can only be one who is favored by the discrimination and thereby gains an unfair competitive advantage, *i.e.*, the favored purchaser, or a customer of the favored purchaser to whom the lower price has been passed on (see, *e.g.*, Austin, Price Discrimination and Related Problems under the Robinson-Patman Act (2d ed. 1959) p. 51; Rowe, Price Discrimination under the Robinson-Patman Act (1962) p. 196 n. 97).

it was contended that the statute reaches customers more remote than the third level.<sup>29</sup>

The chairman of the House subcommittee which considered the bill specifically stated that the act was intended to extend only to the third line of competition, i.e., to customers of either "the grantor or grantee" (80 Cong.Rec. 9417 (1936) (remarks of Rep. Utterback)).

By enacting the statute, Congress expressly demonstrated that it knew how to define the levels of competition to which it intended the amendment to apply (*Federal Trade Comm'n v. Sun Oil Co.* (1963) 371 U.S. 505, 514-515). The specific language of the amendment is entirely consistent with the congressional purpose and is confined to those levels of competition where a price discrimination can reasonably be assumed to have an identifiable impact upon competition with a particular marketer. Congress defined the limit of these levels to be the tertiary line, in this case *Western Hyway*.<sup>30</sup>

29. All of the commentaries on the act discuss its application only upon the three designated levels: primary, secondary and tertiary (see, e.g., Rowe, *Price Discrimination under the Robinson-Patman Act* (1962), p. 37, 141-205; Patman, *Complete Guide to the Robinson Patman Act* (1963), p. 47-49; Kintner, *An Antitrust Primer* (1964) pp. 61, 64-68.

30. As petitioner apparently recognizes, nothing in this Court's decision in *FTC v. Fred Meyer, Inc.* (1968) 390 U.S. 341, suggests reading the word "customer" in Section 2(a) as meaning other than a direct customer of the grantor or recipient of the discrimination. To be sure, *Fred Meyer* held that the word "customer" in Section 2(d) encompassed a retailer who purchased through a wholesaler and who was the competitor of the retail purchaser that received promotional payments. But the effect of that holding is merely to make Sections 2(d) and 2(e) of the act coextensive in scope with the principal provision, Section 2(a). Were it otherwise, the prohibition against price discrimination in such a situation (see *Trade Comm'n v. Morton Salt Co.* (1948) 334 U.S. 37, 55) could be avoided through the guise of giving promotional payments or services.

There are good reasons for stopping the inquiry on competitive effects at the third level. To go further down the ladder would require consideration not only of the question whether the price advantage was passed on but consideration of numerous intervening factors as well.<sup>31</sup> The fact that other jobbers supplied by Standard in the Northwest did well while paying prices comparable to the price paid by Perkins (see p. 17, *supra*) indicates that there were indeed intervening factors which caused or permitted Regal adversely to affect petitioner's market. Did Perkins exact an inordinately large margin from his customers?<sup>32</sup> Did the service stations supplied by him fail to gain the public acceptance enjoyed by the customers of Standard's other jobbers? Were the service stations operated by Regal and by others who increased their sales better located than those supplied by Perkins? Were the operators of the Regal and other stations more efficient? Such questions would multiply to the point that a trial would become utter confusion. Thus, Congress wisely limited the scope of the Robinson-Patman

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31. Examples have occurred in situations less remote than a fourth-line case. Thus, the recipient of the price advantage might have been able to obtain an equally low price from a competitor of his supplier, a fact which would negate the casual connection between the grantor's price and claimed injury to the disfavored purchaser (see *American Oil Company v. F.T.C.* (7 Cir. 1963) 325 F.2d 101, certiorari denied (1964) 377 U.S. 954). Also, if petitioner really could have obtained a lower price from someone other than Standard, as he contends (Br. 18), his failure to do so would negate injury from Standard's price (see *Kri-Valley Packing Association v. F.T.C.* (9 Cir. 1964) 329 F.2d 694, 703-704). And a failure to exploit one's competitive possibilities would be a factor influencing causation (see, e.g., *Alexander v. Texas Company* (W.D. La. 1958) 165 F.Supp. 53, 58).

32. In a deposition, Allen Perkins averred that a gross profit of one cent per gallon was adequate in the Perkins jobber operation (Tr. 3435-3436). Petitioner made a much larger gross profit on the bulk of his sales (Exh. 1457A, col. (4)).



amendments to the third level. Indeed, the record in this case demonstrates that proof of causation further down a chain of distribution deteriorates into impermissible guesswork and speculation.<sup>33</sup>

This Court has recognized the importance of reconciling the prohibitions of Section 2(a) with the broader antitrust policies of the Sherman Act (*Automatic Canteen Co. v. F.T.C.* (1953) 346 U.S. 61, 74). Pricing is the "central nervous system of the economy" (*U.S. v. Socony Vacuum Oil Co.* (1940) 310 U.S. 150, 226). The strong policy in favor of encouraging competition—including price competition—might well be thwarted by extending the reach of the Robinson-Patman "competitive effects" provision beyond the third level.<sup>34</sup> Those who make pricing decisions will be less likely to engage in price competition if unable to foresee whether subsequent purchasers more remote than a customer's customers would receive the benefit of a lower price to the immediate buyer. Permitting those who compete with remote purchasers to sue and to ascribe all declines

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33. For example, petitioner's marketing expert testified it was Regal's new marketing concept, advertising campaign and its sales promotion and service to the public—not gasoline prices—which "had the major impact" (A. 276-277). While the court of appeals adverted to Regal's "well publicized entry into the market" as well as its low prices, it did not attribute either to Standard's prices to Signal.

34. The danger of encouraging resale price maintenance by applying the competitive effects provisions even to the third level is highlighted by the abandonment by the Solicitor General of a portion of the F.T.C.'s order before the Supreme Court in *Standard Oil Co.* (1953) 49 F.T.C. 923, 956, vacated (7 Cir. 1956) 233 F.2d 649, affirmed (1958) 355 U.S. 396 (see the Reply Brief for the Federal Trade Commission in that case, No. 24, Oct. Term, 1957, p. 32). There the Commission's superseded order had prohibited Standard of Indiana from selling to retailers at higher prices than its wholesale customers charged their customers which competed with the retailers.

in their sales and the prospering of their competitors to the price of a seller three times removed would inevitably tend to have a chilling effect upon price competition. And surely it would jeopardize legitimate pricing techniques to permit speculation as to the marketing repercussion of even minimal price differentials in complex marketing situations where a multiplicity of factors are involved.

We note and emphasize that petitioner virtually concedes the correctness of the decision of the court below on this point (Br. 25). Its whole argument is directed to an effort to show some basis for liability under the original provisions of Section 2(a) or on the theory that injury occurred here on the secondary-line. We turn now to these contentions.

**III. The original language of Section 2(a) of the Clayton Act: Petitioner is not entitled to a reversal of the decision of the court of appeals on the basis of the original language of Section 2(a) of the Clayton Act. This question was not presented to, or passed upon, by that court. In any event, it is without merit, since petitioner failed to establish that the effect of Standard's price to Signal was substantially to lessen competition.**

It is true that the court of appeals "completely ignored the original Clayton Act standard" (Br. 37). It did so, however, because petitioner raised no issue in that court under that part of Section 2(a).<sup>35</sup> Petitioner first mentioned that

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35. In his Reply Brief for Petitioner (p. 4) filed in response to our brief in opposition to the petition, petitioner states that in the court of appeals petitioner argued that Standard's discriminations "lessened competition throughout the entire Pacific Northwest market, aggravating existing tendencies towards monopolization." This is not correct. In support of this statement, petitioner refers to pages 28-31 and 38-42 of Brief of Appellee in the court below. The only reference to original Clayton Act language in petitioner's some 300-page brief filed there is found in a heading in the statement section of the brief containing the words: "The price discrimi-

separate standard, and first cited the case upon which he now principally relies,<sup>36</sup> in the court of appeals in his "Answer of Appellee to Response to Petition for Rehearing" (pp. 6-7).<sup>37</sup> Even there, however, petitioner's discussion of the original Clayton Act standard was limited to his contention that he competed at the secondary level with Signal.

The objection to petitioner's raising this issue for the first time before this Court is more than a technicality. Because the issue was not raised in the court of appeals, that court had no reason to appraise the effects, if any, of the discrimination (assuming, contrary to the fact, that it was passed on to Regal) upon a line of commerce generally. Nor did the court of appeals have an opportunity to define the relevant market or markets or determine whether within the market or markets there was in fact or probability a substantial lessening of competition, apart from some particular effect on Perkins.<sup>38</sup>

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nation admitted here aggravated the tendencies toward monopolization" (p. 38). Neither the material following that heading nor argument elsewhere in the brief, urged that the asserted price discriminations substantially lessened competition or tended to create a monopoly as provided by Section 2(a).

For the convenience of the Court, we have lodged with the Clerk a copy of petitioner's brief and other documents he filed in the court below.

36. *Van Camp & Sons v. Am. Can Co.* (1929) 278 U.S. 245. We do not dispute petitioner's right to rely upon the original Clayton Act theory upon retrial.

37. Following the court's decision directing a new trial, petitioner filed a "Motion for Clarification" and a Petition for Rehearing. The court of appeals entered an order on April 18, 1965, requesting Standard to respond and giving petitioner opportunity to answer its response. The document referred to in the text above is that answer.

38. In footnote 6 to its opinion (A. 108, n. 6) the court of appeals stated by way of dictum that substantial evidence supported Perkins' position that the price war started by Regal spread into a "major conflagration" with an impact "far beyond Portland," in a "chain-reaction throughout Perkins' entire market area." But the

The whole thrust of the case in the trial court was directed at alleged injury to Perkins, and not to competition generally.<sup>39</sup> Questions of the definition of the geographic and product markets were nowhere outlined in the instructions. To say now that the "retailing and wholesaling of gasoline in the Pacific Northwest" (Br. 26) is the proper market definition is to substitute *post hoc* characterizations for meaningful market analysis.

In any event, as we have shown (see pp. 26-30, *supra*) petitioner failed to prove that the competitive effect he says occurred in the asserted market was "the effect of" the small discrimination in favor of Signal. There was no evidence that the activities of Regal were caused by that discrimination. For the same lack of causation, petitioner's original Clayton Act theory cannot be upheld with respect to sales to Signal in Seattle nor with respect to the miniscule one week's price discrimination in favor of five Standard dealers in one small town (see pp. 45-46, *infra*).

**IV. No secondary-line case: Petitioner did not compete with Standard's purchaser, Signal, or Signal's customer, Western Hyway, and there was no evidence that Signal directed the acts of Regal.**

Petitioner's claims of secondary-line injury cognizable under the Robinson-Patman amendments to Section 2(a)

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court specifically stated that the extent of this showing was an adverse effect upon the "business carried on by Perkins." There was no finding of injury to competition generally, in any specified market or markets. And it does seem doubtful that prices at three service stations in Portland could have this effect on competition generally, from central Washington to the California border.

39. This is not surprising, since, so far as we are aware, there has not been a private price discrimination case brought under the original Clayton Act "competitive effects" provision since the Robinson-Patman Act was passed.



are twofold: (1) that he was in competition directly with Signal at the secondary level (Br. 58-62), or (2) that the separate corporate entities of Signal, Western, and Regal should be disregarded on the ground that Signal directed the acts of Regal (Br. 63-66).

**A. PETITIONER AND SIGNAL WERE NOT COMPETITORS WITHIN THE MEANING OF THE ROBINSON-PATMAN ACT.**

The Robinson-Patman amendments to Section 2(a) are not violated unless the effect of the price discrimination may be

“• • • to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them • • •.”

As we have shown in Part II hereof, the intent of Congress, unmistakably expressed, was to protect only competition with the originating seller (primary-line), with the favored purchaser (secondary-line), or with customers of the favored purchaser (third-line). There is no secondary-line case here because petitioner was not in competition with Signal, the favored customer, or with Western, which purchased from Signal. *Trade Comm'n v. Morton Salt Co.* (1948) 334 U.S. 37, relied on by petitioner, is not to the contrary. There, retail customers of the non-favored wholesaler were injured in their competition with the favored direct-buying retailer, which of course impaired secondary-line competition with the favored “customer” of the discriminating seller.

Competition is “an endeavor to get the same trade from the same people at the same time” (*Beech-Nut Packing Co. v. P. Lorillard Co.* (3 Cir. 1925) 7 F.2d 967, 970). It “is not a technical legal conception, but a practical one, drawn

from the course of business."<sup>40</sup> Thus, it has been held that no secondary-line injury can result where the purchasers do not in fact compete because of territorial barriers (see, e.g., *Davidson v. Kansas City Star Company* (W.D.Mo. 1962) 202 F.Supp. 613, 618-619, reversed on other grounds sub.nom. *Bales v. Kansas City Star Company* (8 Cir. 1964) 336 F.2d 439), or because one purchaser is in fact a user of the product and the other a reseller (see, e.g., *Shell Oil Co., et al.* (1958) 54 F.T.C. 1274, 1279; cf. *Minneapolis-Honeywell Reg. Co. v. Federal Trade Com'n* (7 Cir. 1951) 191 F.2d 786, 792) or, more significantly, because the two channels of distribution (or resale) in which the purchasers engage are separate, with no practical opportunity for them to solicit each other's accounts. For example, in *Shell Oil Co., supra*, a taxicab association bought gasoline at a favorable price and resold it to its members as well as to the public (51 F.T.C., at 1275). The Commission held that to the extent that the association sold gasoline to its members it was not in competition with other stations (51 F.T.C., at 1279, 1280). And in *E. Edlemann & Co.* (1955) 51 F.T.C. 978, 983-984, affirmed (7 Cir. 1956) 239 F.2d 152, certiorari denied (1958) 355 U.S. 941, it was recognized that if one channel of distribution were foreclosed to the complaining purchaser because it was composed of franchised dealers who bought only from their franchisor, then a price discrimination could have no anti-competitive effect, because "competition would be aborted or foreclosed regardless of price" (see also *Chicago Sugar Co. v. American Sugar Refining Co.* (1949) 176 F.2d 1, 9-10).

40. *The Quaker Oats Co.*, 1963-1965 CCH Transfer Binder FTC Complaints, Orders, Stipulations, par. 17,134, p. 22,215 (Elman, Comm'n'r), quoting *Swift & Co. v. United States* (1905) 196 U.S. 375, 398.

Lack of competition between purchasers often follows functional differences (cf. *General Foods Corp.* (1956) 52 F.T.C. 798, 824); the test is not one of labels (e.g., wholesaler, retailer) but whether the "purchasers . . . in fact compete" (*Fed. Trade Comm'n v. Ruberoid Co.* (1952) 343 U.S. 470, 475).<sup>41</sup>

Thus, in practical terms, petitioner and Signal were not in "competition" with one another at the secondary level. They operated in entirely separate channels of distribution. Signal sold only to Western, and Perkins sold only to certain small distributors, such as his nephew Fraser, and to certain retail station operators, most of whom were tied to him by leases and all of whom marketed under his brand name. "Champion." At no time did Perkins seek, or compete with Signal for, the business of Western. Indeed, Perkins could not have sold to Western or its customer, Regal, because he had precluded himself from marketing in Portland by his agreement with Powell and Robert Harris (p. 16, *supra*). Moreover, large resellers do not as a trade practice purchase from jobbers such as Perkins (see *Secatore's, Inc. v. Esso Standard Oil Company* (D.Mass. 1959) 171 F.Supp. 665; *Sano Petroleum Corporation v. American Oil Company* (E.D.N.Y. 1960) 187 F.Supp. 345). The fact that somewhere down the line of their separate distributive chains purchasers of gasoline originating with Signal ultimately compete with purchasers of gasoline originating with Perkins does not establish competition at the secondary level.<sup>42</sup>

41. It is clear that the Commission in *Ruberoid* meant by the phrase, "purchasers who are in fact competing with one another in the resale of the products in question," some prospect of "diversion of trade" between them (46 F.T.C., at 386).

42. The district court cases cited by petitioner (Br. 60-61) are not to the contrary. In *Guyott Company v. Texaco, Inc.* (D.Conn. 1966) 261 F.Supp. 942, 952, there was evidence that the favored

Petitioner argues that Perkins competed with Signal because each of them "purchased gasoline directly from Standard; each wholesaled that gasoline in the Pacific Northwest; and the retailers served by each actively competed" (Br. 59). This misstates the record because Signal did not sell to retailers in the Northwest, but sold to Western, which resold to a retailer, Regal. Nonetheless, it is apparently petitioner's theory that because all products eventually reach consumers, everyone who participates in their distribution or resale is in direct competition with each other—that is, every non-primary-line Robinson-Patman case is a secondary-line case. Manifestly, that is not what Congress intended.

The Act speaks separately of "competition with" the original seller, "competition with" the recipient of the favored price and "competition with" the customer of the recipient. Thus, Congress recognized the realities of the marketplace by focusing on specific competition at distinct levels in the chain of distribution. If it were otherwise, the elaborate definitional language in the Robinson-Patman amendment would have been superfluous, for Congress could simply have forbidden price discriminations whose effect may be "to injure, destroy or prevent competition with any person."

In this case, even if it could be shown (contrary to the fact) that the discrimination in favor of Signal was passed

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purchaser itself was in competition with customers of the disfavored purchaser (see *Trade Comm'n v. Morton Salt Co.*, *supra*). In *Ingram v. Phillips Petroleum Company* (D.N.Mex. 1966) 259 F.Supp. 176, the court found that the disfavored purchaser would lose sales directly to the favored purchaser (259 F.Supp., at 183). Finally, despite the court's use of the term secondary-line, *McCormack v. Theo. Hamm Brewing Co.* (D.Minn.) 1968 Trade Cases par. 72,404, is in fact a third-line case.



on to Western, and by it to Regal, the competitive impact was limited to competition with Regal. Such competition, at the fourth distributive level, is not covered by the Robinson-Patman amendment to Section 2(b).<sup>43</sup>

**B. ABSENT EVIDENCE TO THE CONTRARY, THE COURT BELOW CORRECTLY REFUSED TO TREAT THE SEPARATE CORPORATIONS OF WESTERN AND REGAL AS MERE TOOLS OF SIGNAL.**

Petitioner argues that Signal, Western and Regal constituted a single favored purchaser because Western and Regal were "mere tools" of Signal (Br. 63). Petitioner concedes that the question whether one corporation controls another corporation in which it owns stock "is a factual one" (Br. 63).

Petitioner states (Br. 63):

"\* \* \* the record below contains evidence from which the jury properly could have inferred that Signal did, in fact, control Western Hyway and Regal to the extent necessary to accomplish Perkins' destruction."

43. Petitioner says that the trial court submitted to the jury the question whether Perkins and Signal were competitors and that the jury could have found that they were (Br. 58-59). This is not correct. The trial court expressly charged the jury that Signal and Perkins were in fact competitors, which, of course, was not the submission of a question of fact for the jury's resolution (see instruction quoted at Br. 58, n. 39). This instruction was contrary to the record, and to respondent's contention throughout the trial (*e.g.*, Tr. 444; R. 1851).

Petitioner misstates the opinion of the court of appeals when he says that the court observed that "it was the diversion of sales (and profits) from the retail outlets served by Perkins to the Regal retail outlets served by Signal that 'adversely affected' Perkins' business" (Br. 61). If this were so, the case would involve third-line competition within the meaning of the Robinson-Patman Act. But it is not so. Signal sold only to the wholesaler Western; it made no sales to Regal or to any other retail outlet.

The court of appeals found (A. 110, n. 6):

"In the case before us the record reveals no substantial evidence to show that Signal in fact dictated the corporate decisions of either Western or Regal. Absent such proof, Regal must be deemed a separate and autonomous entity."

Petitioner's own effort, at pages 63 to 65 of his brief, to find some support for his statement that "the jury properly could have found that Signal exercised its powers over its subsidiaries to the extent necessary to achieve the goal prohibited by the Clayton Act" (Br. 65), best demonstrates the lack of merit in his contention.

Petitioner says, first, that Signal could have controlled Regal's prices had it wanted to (a more than doubtful conclusion under the Sherman Act, *Dr. Miles Medical Co. v. John D. Park & Sons Co.* (1911) 220 U.S. 373; *Kiefer-Stewart Co. v. Seagram & Sons* (1951) 340 U.S. 211), but makes no contention that Signal in fact ever did control Regal's prices. He says next that some Signal officials were confused about the relationship between the Regal companies (Br. 64), a fact which, if true, would seem to indicate lack of interest in what Regal did, rather than the opposite.

Petitioner next says that the jury had before it "evidence" that a deteriorating price structure was in accord with Signal's objective, and "evidence" that Signal treated Western as its dependent-transportation arm (Br. 65). He cites no record reference to support these assertions. In fact, there is no such evidence in the record.

Petitioner then refers generally to "manipulation and utilization of subsidiaries" to avoid the proscriptions of the Clayton Act, but states no fact that shows that any such "manipulation" or "utilization" occurred here (*ibid.*).

Finally, in place of proof, petitioner says that obtaining proof would have been an "insurmountable task" (Br. 65, n. 41).<sup>44</sup>

The truth of the matter is that the jury "found" nothing on this issue. At the trial, petitioner did not question that Signal, Western and Regal were separate and autonomous entities. He requested no instructions to the jury on this matter, and none was given. He did not even mention the matter in his argument to the jury (Tr. 6076-6209, 6296-6325A). So far as the jury was concerned, the issue never existed.

The court of appeals correctly held that the separate corporate identities of Signal, Western and Regal should not be disregarded merely because Signal owned 60 per cent of the stock of Western, and Western owned 55 per cent of the stock of Regal, in the absence of evidence that the subsidiaries' decisions were in fact controlled by the parent (A. 109-110, n. 6)—evidence which is lacking here.<sup>45</sup> Indeed, there was not even proof of a single common officer or director (cf. *Labor Board v. Deena Artware* (1960) 361 U.S. 393, 399-400, 402-404). Pejorative statements without foundation in the record, e.g., "since Signal decided to do all that was necessary to drive Perkins out of business" (Br. 65-66) are not a substitute for proof.<sup>46</sup>

44. The task was not insurmountable. As petitioner acknowledges, Signal officials and Western's auditor were witnesses at the trial (Br. 10, n. 11, 64). Petitioner made no inquiries into inter corporate control.

45. Indeed, what evidence there is shows that Western acted quite independently of Signal. In 1955, to Signal's considerable chagrin, Western began to purchase gasoline from suppliers other than Signal and by 1957 bought more than 50 per cent of its total volume from other suppliers, thus depriving Signal of its wholesale profits (see p. 11, *supra*).

46. In response to petitioner's motion for clarification of the opinion of the court of appeals, respondent noted that petitioner, on retrial, is free to litigate the issue of fact whether Signal dictated the corporate decisions of either Western or Regal.

- V. This Court should not reinstate the jury verdict. Numerous material errors of the trial court, some recognized by the court of appeals and others referred to but not passed upon by that court, require a new trial.

A reversal of the decision of the court of appeals on the question of law concerning the competitive effects provisions of Section 2(a) would not warrant reinstatement of the verdict. On appeal, Standard specified numerous material errors of the trial court.<sup>47</sup> The court of appeals decided a number of these against Perkins. As to others, the court expressed confidence that they would not occur at another trial, but added the admonition that its failure to pass upon them "is not to be taken as appellate approval" (A. 117). Since petitioner asks for reinstatement of the verdict, we advert here to issues other than those discussed above which would make such disposition of the case inappropriate. We recognize that resolution of these issues would require a review of this voluminous record—a task which appropriately lies in the first instance with the court of appeals (see *F.T.C. v. Anheuser-Busch, Inc.* (1960) 363 U.S. 536, 542, 553; *Utah Pie Co. v. Continental Baking* (1967) 386 U.S. 685, 704). We raise them here simply to demonstrate their substance.

**A. ERRORS WITH RESPECT TO BRANDED DEALERS.**

**(1) PRICE ASSISTANCE GRANTED BRANDED DEALERS DURING PRICE WARS DID NOT RESULT IN DISCRIMINATION.<sup>48</sup>**

As noted above, Standard normally sold to its dealers at the posted tank truck price, while Perkins had a jobber's discount of from 4 to 5½ cents per gallon off that price.

47. For the convenience of the Court, we have lodged with the Clerk a copy of our "Specification of Errors" required by and filed with the court of appeals. That document is referred to as "Spec. Errors."

48. Spec. Errors, pp. 70-96.



pp. 16-17, *supra*). Standard extended price assistance to its dealers (an allowance off posted price) during price wars (Exhs. 1453A, 1453B). Standard contended that the price to its dealers, for the purpose of determining discrimination, was what they actually paid, i.e., the tank truck price less any price assistance allowance; that the law did not require Standard always to maintain Perkins' price advantage over Standard's dealers; that price discrimination would occur only if the dealers' actual price was lower than the price paid by Perkins. This clearly is the law.<sup>49</sup>

The trial court refused Standard's instruction to this effect (A. 85-86; A. 457) and, over Standard's objection, its instructions permitted the jury to award damages to Perkins because of Standard's price assistance policy, even though the prices to dealers were higher than those paid by Perkins (A. 65-67, 473-474).<sup>50</sup>

Standard's motion for directed verdict and peremptory instructions on this issue were also erroneously denied.

There is no question as to the facts. Standard's price records (Exh. 81A-XX) show that Perkins always enjoyed a lower price than Standard's dealers except for the one-cent differential as to one grade of gasoline during one week in one price zone in the town of Centralia, Washington.

49. *Jarrett v. Pittsburgh Plate Glass Co.* (5 Cir. 1942) 131 F.2d 674; see *A. J. Goodman & Son v. United Lacquer Mfg. Corp.* (D. Mass. 1949) 81 F.Supp. 890. This accords with the definition of "price" as used in the statute (see *The Firestone Tire & Rubber Co.* (1959) 55 F.T.C. 1759, 1764; *Morton Salt Co.* (1948) 45 F.T.C. 328, 329; *United States Rubber Co., Et Al.* (1939) 28 F.T.C. 1489, 1504); it further reflects the fact that the repeated attempts to make functional discounts compulsory have always been rejected (S. 315, 86th Cong., 1st Sess.; H.R. 3465, 87 Cong., 1st Sess.; H.R. 2170, 88th Cong., 1st Sess.).

50. In appraising the effect of the instruction given, it should be noted that the term "subsidy" was used frequently throughout the trial as synonymous with "retail price assistance" (e.g., A. 196-197, Tr. 4424, 4690, 5039).

**(2) PETITIONER'S WHOLESALE DISTRIBUTION CONSTITUTED PRACTICALLY ALL OF HIS BUSINESS. AS A WHOLESALER HE WAS NOT ENTITLED TO PROMOTIONAL PAYMENTS OR SERVICES.<sup>51</sup>**

Practically all of Perkins' business was wholesale distribution. The trial court submitted to the jury Perkins' claim that Standard violated Sections 2(d) and 2(e) of the Clayton Act by extending to branded dealers promotional payments and services not made available to Perkins (A. 66-67). The court of appeals sustained Standard's contention that this was error (A. 103-104, 111-112; A. 457-458, e.g., A. 82-83, 89; R. 1786, 1787, 1829), since Perkins, to the extent he operated as a wholesaler, was not entitled to services and promotional payments on proportionally equal terms with Standard's branded dealers. This ruling is in accord with this Court's decision in *FTC v. Fred Meyer, Inc.* (1968) 390 U.S. 341, 357. The evidence discloses only one retail operation by Perkins—a service station in Vancouver, Washington (A. 487; Tr. 1241-1242, 4896). Yet, the trial court's instructions permitted the jury to award damages under Sections 2(d) and 2(e) measured by Perkins' entire wholesale gallonage (A. 65-67).

There is an additional issue concerning Sections 2(d) and 2(e) not discussed by the court of appeals. Standard did not extend retail price assistance to any branded dealer in Vancouver (A. 391). At the same time, Perkins' retail station enjoyed a jobber's price advantage of 4 to 5½ cents (A. 591). Perkins was not entitled to this price advantage over Standard's dealers and, in addition, to the restroom maintenance allowance and credit card service. Even if he were so entitled, he was not injured because of his much lower gasoline cost.

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51. Spec. Errors, pp. 70-71, 91, 97.

**(3) THERE WAS NO EVIDENCE OF INJURY TO PETITIONER RESULTING FROM STANDARD'S TREATMENT OF ITS BRANDED DEALERS.<sup>52</sup>**

The court of appeals did not discuss Standard's assignments of error relating to the standards of proof necessary to show injury proximately caused by reason of alleged discriminations. Proof of injury by reason of advantages extended by Standard to its dealers and denied Perkins requires a showing of diversion of trade from petitioner to the favored dealers or a diminution of petitioner's profits resulting from the lowering of his resale prices to avoid such diversion of trade (*Enterprise Industries v. Texas Company* (2 Cir. 1957) 240 F.2d 457, certiorari denied (1957) 353 U.S. 965; *Sam Cosmetic Shoppe v. Elizabeth Arden Sales Corp.* (2 Cir. 1949) 178 F.2d 150; *Youngson v. Tidewater Oil Company* (D.Or. 1958) 166 F.Supp. 146, 147; *Alexander v. Texas Company* (W.D.La. 1957) 149 F. Supp. 37, 41). There is no evidence that Standard's branded dealers diverted trade from petitioner or any outlet supplied by him. Nor is there any evidence that petitioner was compelled to lower a price to keep customers from dealing with Standard dealers.

**B. ERRORS GOING TO THE DAMAGE COMPUTATIONS.**

**(1) ERROR IN ADMISSION OF AND INSTRUCTIONS ON DIFFERENTIAL CHART.<sup>53</sup>**

Petitioner's Exhibit 82B (A. 503), entitled "Price Differential on Gallons Sold," was a schedule purporting to show the total differential between prices paid for gasoline by Perkins and by Signal—\$128,420. It was computed as follows: Petitioner took a figure (.6877 cents), which he claimed to be the "average differential" between the prices paid by Perkins and the prices paid by Signal at Portland

52. Spec. Errors, pp. 72-73, 104-107.

53. Spec. Errors, pp. 188-220.

during the period July 1, 1956, to November 1, 1957 (Exhs. 82C-82D, A. 529-530), and multiplied it by the entire gallonage of gasoline delivered by Standard to Perkins throughout the entire Northwest during the period from March 6, 1955, to November 30, 1957.<sup>54</sup> This faulty schedule went to the jury with the instruction that "In determining the amount of damage, if any \* \* \* suffered by [Perkins]" the jury could consider "the amount of price differential on gasoline \* \* \*" (A. 65-66). Clearly the admission of the faulty schedule and the instruction were material error, as is clearly demonstrated in petitioner's argument to the jury (*e.g.* Tr. 6090, 6152, 6316-6317, 6324).

Further, the price was fictitious. It was a computed price for gasoline destined for resale in Portland and improperly eliminated a .33 to .36 cent freight allowance (Exh. 82-C-82-D, A. 529-530, Tr. 3594-3596). But even if the figure be accepted, Perkins' isolated sales in Portland were a "drop in the bucket" when compared with Perkins' total sales (Tr. 3634; see p. 16, *supra*).

## (2) ERRORS IN DAMAGE COMPUTATIONS REFLECTING DECLINES OF OVERALL SALES.

### (a) *Loss of profits on gasoline sales.*<sup>55</sup>

Petitioner's Exhibits 82-E (A. 531) and 82-F (A. 533) presented to the jury a damage claim of \$168,251 for alleged loss of gross profits on gasoline sales from March, 1955, to December 1957.<sup>56</sup> The exhibits compared "adjusted" actual

54. Actually Signal did not begin lifting in Portland until August 27, 1956 (A. 203; Tr. 4318; Exhs. 1550A-1 through A-4), and the first Regal station, the alleged source of injury, did not open until September of that year (Exh. 1683).

55. Spec. Errors, pp. 220-240 (see also p. 16, note 17, *supra*).

56. The assumed gross profit of two cents per gallon used in Exhibit 82-E (A. 531) consisted of Perkins' actual average gross profit during 1955 through 1957, to which the accountant added the "average price differential" discussed above (p. 48), which was computed for a period of less than half the three years to which it was applied (Tr. 3654-3660).



sales<sup>57</sup> with an ideal gallonage which was computed on the assumption that sales of gasoline by Perkins during 1955, 1956 and 1957 would have increased ten per cent per year but for the alleged discriminations. The court of appeals held this assumption to be without foundation and to be unwarranted (A. 115).<sup>58</sup>

(b) *Loss of sales generally.*<sup>59</sup>

Petitioner's Exhibit 82-G-2 (A. 534) is a schedule which presented to the jury a damage claim of \$10,771 for loss of gross profits due to a decline in the sale of fuel oils. Exhibit 82-O (A. 539) stated a claim of \$155,700 for loss in the goodwill value of the Perkins' fuel oil business based on the decline of fuel oil sales. Exhibits 82-J, 82-L and 82-M (A. 535-537) made claims for \$136,441, \$29,915 and \$5,190, respectively, for losses in the going concern value of Perkins' reversionary interests in service stations leased to others. The premise underlying all of these exhibits was that every single loss of sales (computed and actual) by Perkins, from early 1955 through November 1957, was

57. The adjustment was totally without evidentiary support. It was arrived at by excluding from actual sales all sales through outlets which the accountant claimed required capital expenditures (Tr. 3640-3641, 3663-3665). There was no evidence that growth in sales can be reasonably expected without some capital outlay, or that the specific outlets excluded required any capital outlay.

58. The only support claimed for this assumption (Tr. 3642-3643) was the provision in Standard's supply contracts (Exh. 2, A. 493, 102, A. 549) obligating Standard to increase the maximum amounts deliverable by ten per cent a year in the event Perkins required such additional liftings. The only evidence on market trends are the Oregon Motor Vehicle Fuel Tax reports (Exh. 21-A). They show that, in Oregon, industry sales decreased in 1957 below those of 1956. They also show a growth of industry sales from 1954 to 1956 of less than five per cent per year and a decline in Standard's share of total industry sales during those years.

59. Spec. Errors, pp. 240-298, 319-322.

caused by Standard's discriminations. Yet, even assuming that the price wars said to have been begun by Regal spread from Portland and ultimately affected the entire market of Perkins, the first Regal station did not open until September of 1956. Thus, even if Perkins had proved the isolated claim of injury in Centralia in 1955, which is unrelated to Regal (see p. 18, *supra*), that incident in that small area is no support for a finding that Standard caused every decline of sales in every product sold by Perkins from Olympia, Washington, south to the California border during the year and a half before Regal opened.

Further, petitioner was permitted to include in its damage schedules losses of sales which clearly were shown to have been sustained for reasons entirely unrelated to any issue in this case.<sup>60</sup>

(c) *Loss of fuel oil sales.*<sup>61</sup>

Allen Perkins testified that customers who quit buying gasoline also quit buying fuel oils (A. 370-371). On this generalization the trial court admitted petitioner's Exhibit 82G-2 (A. 534) and Exhibit 82-0 (A. 539) which were schedules showing a decline in the gross profits and goodwill value of Perkins' fuel oil business in the amount of \$166,471.

60. Thus the decline in sales of a Perkins' dealer in Centralia was proved to be due to the freeway's bypassing his station (Exhs. 1419-B, 1419-F; A. 242); another customer was lost because his former supplier, with whom he was still under contract, enforced his contract by court action (Exhs. 1328-A through 1328-D, 1329); the Perkins of Oregon corporation closed a station in Portland for unexplained reasons months before the advent of Regal; other customers were lost to Standard's competitors—Time Oil Co. (A. 137; Tr. 3041; Richfield (Tr. 5608-5610); and Shell (Tr. 3452). The damage schedules attributed all of these losses to Standard's alleged discriminations.

61. Spec. Errors, pp. 240-254, 283-290.

Quite apart from its lack of evidentiary value, the testimony was incorrect.<sup>63</sup>

(d) *Losses to Perkins individually.*<sup>63</sup>

Exhibits 82J (A. 535), and L (536), claiming \$136,441 and \$29,915 for loss suffered by Perkins as an individual in the goodwill value of his reversionary interest in service stations, were erroneously admitted for the further reasons, as held by the court of appeals, that their captions were misleading and they included business other than that done at service stations (A. 115). Further, Perkins did not realize a loss in his proprietary or reversionary interest in his retail stations. When he terminated the supply arrangement with Standard, he leased his service stations to Westway, a subsidiary of Union Oil Company (Exh. 1003). Westway's rental depended largely on the gallonage which Westway would thereafter sell through the stations (Tr. 1597; Exhs. 1003, 1607(A)-(H), and not at all on how much Standard gasoline had been sold through the stations earlier. Consequently, even if a loss in the goodwill value of Perkins' interest in the service stations did occur prior to 1957 because of a decline in gallonage, the loss did not materialize because Perkins did not dispose of his interest in the stations (*Volasco Products Company v. Lloyd A. Fry Roofing Company* (6 Cir. 1962) 308 F.2d 383, 393, certiorari denied (1963) 372 U.S. 907). Actually, Perkins as an individual received higher rentals from Westway than he received from the Perkins corporations (Exhs. 1084-1087, A. 578-584).

62. The Washington corporation's company-operated retail station near Vancouver averaged 34,136 gallons of gasoline per month during the 18 months before Regal opened and 32,182 gallons per month during the remaining 14 months; it averaged 16,101 gallons of diesel oil pre-Regal, and 27,728 gallons per month after Regal (Exh. 284B, A. 563).

63. Spec. Errors, pp. 257-269.

**C. ERRORS RELATING TO STANDARD'S MEETING COMPETITION DEFENSE.<sup>64</sup>**

Relying on the "good faith meeting competition" defense of Section 2(b), Standard offered to show that in making the adjustments to Signal which gave it the slight price advantage over Perkins, it did so to meet the lower prices of a competitor. An officer of Standard testified that before Standard lowered its price to Signal he was informed by that company that Union had made it a lower offer and that the reduction to Signal was made to retain its business (A. 428, 432-433; Exh. 1705, A. 651) Thereafter, Standard offered, and the court excluded Union's business records (Exhs. 1694, 1695, 1696, 1698, 1699, 1702, 1708, 1713 and 1714, A. 635-642, 644-645, 648, 654 and 658-660) showing sales by Union to Signal at prices below those offered by Standard (Tr. 5201, 5539-5541). The documents were offered to corroborate the prior notice by Signal to Standard and as direct evidence of Union's prices. The ruling by the court of appeals that the exclusion of that corroborative evidence was erroneous is clearly correct, particularly in view of the trial court's instruction (A. 64):

"\* \* \* *there must have been a definite offer* which was extended by a competitor of defendant Standard to a customer of defendant and defendant must have been aware of such offer and must have acted in good faith in meeting such competitive offer" (emphasis added).

Moreover, the instruction itself was incorrect, as the court of appeals recognized (A. 116-117). Under settled law, respondent was not required to prove a definite offer but rather only a reasonable belief that a lower competitive offer had been made (see, *e.g.*, *Trade Comm'n. v. Staley Co.* (1945) 324 U.S. 746, 759-760).

64. Spec. Errors, pp. 442-456.



The error was not cured by the fact that the trial court also gave Standard's requested instruction, correctly stating the law. A jury is not permitted to choose between inconsistent instructions, where one is erroneous. In such a situation prejudice will be presumed (see, e.g., *Bollenbach v. United States* (1946) 326 U.S. 607, 611-612; *Pacific Greyhound Lines v. Zane* (9 Cir. 1947) 160 F.2d 731). That rule is particularly applicable here, where counsel contributed to the prejudice by arguing to the jury:

"[T]he burden is upon them in this particular issue. They must show you that *they were in fact* meeting a bonafide [sic] competitive offer extended to Signal Oil and Gas as a justification" (Tr. 6188) (emphasis added).<sup>65</sup>

### CONCLUSION

For the reasons stated, the judgment of the court of appeals, which directed a new trial, should be affirmed.

Respectfully submitted.

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April, 1969.

65. Petitioner argues at Br. 66-68 that no reversible error was committed with respect to Standard's good faith meeting competition defense discussed above. He did not, however, preserve this point for review here in his petition for a writ of certiorari, either in the questions presented (Pet. 2-3) or in his footnote reservation with regard to certain damage issues (Pet. 13, n. 7).

## Appendix

### Record citations for exhibits referred to in this brief are as follows:

(References are to the trial transcript. Exhibits not identified in the transcript were identified in the pretrial order (R. 1264-1386))

Exhibit No.	Plaintiff's Exhibits		Received
	Identified	Offered	
2	p. 2142-3	1307	1307
4A	1407-8	1408	1408
4B	290-1	291	291
21A	2464-5, 3545	2464-5, 3545	2485, 3546
23H	1454-5	1455	1455
24BBB )	2050-2051	2052	2052
24CCC )			
81A through XX	2008-10	2009	2012
82B	3627-8	3631	3639
82C	3592	3593	3623
82D	3591	3593	3623
82E	3639-40	3650	3819
82F	3639-40	3650	3819
82G-2	3684-5	3685	3695
82J	3713-6	3716	3729
82L	3740-1	3741	3744
82M	3746	3747	3749
82-O	3783-4	3786	3790-1
93I		3013, 3020 3418	3418
93M	2983-4	3416, 2988	3417, 3011
93N		3416	3417
102		1249	1249
106C			2221
106D	2221		2221-2
106E	2222		2222-3
235	2627-8, 3636, 3637, 3639-40, 2633	2640	2642
284A )	3075	3075	3077
284B )			
354B through Y		6046	6046
403 )		159	159
422 through )			
428			

## Appendix

Exhibit No.	Defendant's Exhibits		
	Identified	Offered	Received
1003		1593	1594
1007	1925	1975	1976
1084 through 1087	3440		3440
			3440
		3442	3442
1311 (A) through 1311 (E)		812-14	814
1328A-D		5616	5617
1329		5616	5617
1415			
1416	1985	1986	1986
1419 (B)	5617		5618
1419 (F)			
	1656		
	1648		
1448	4115-16	4159	4177-8
1449	4276	4276	4282
1450 (B) through 1450 (Z)	4218	4218-19	4219
1451	4670-77	4677	4677
1453 (A)	4522	4522	4522
1453 (B)			
1453 (R)		637	638
1456 (A)	4715	4720	4721
1457 (A)	4682-9	4689	4696
1458 (A)	4747	4755	4755
1458 (D)			5619
1463	4697-4701	4703	4704
1467	4856-7	5143	5144
1477	4896-7	5143	5144
1478	4901-2	5143	5144
1479	5031-2	5143	5144
1480	5047-8	5143	5144
1481	5055-6	5143	5144
1482	5058-9	5143	5144
1483	5060-61	5143	5144
1485	5067-8	5143	5144
1488	5081-2	5143	5144
1489	5084	5143	5144
1490	5085-6	5143	5144
1491	5092-3	5143	5144
1493	5106-7	5143	5144
1494	5113-14	5143	5144

## Appendix

3

## Defendant's Exhibits (Continued)

Exhibit No.	Identified	Offered	Received
1495	5120-1	5143	5144
1497	5123-4	5143	5144
1500	5140-1	5143	5144
1504 (A)		1663	1663
1511 (A)	4696	4696	4696
1511 (B)			
1523 (A) (CC)	4534	4542	4543
through	4543-5	4542	4542
		4545	4546
1550	4319	4321	4361
1550 (A) (1) through	4313-15	4317	4317-
			4318
1550 (A) (4)			
1550 (B)	5492	5493	5496
1550 (B) (1)	5493	5493	5496
1607 (A) through		1594	1595
1607 (G)			
1607 (H)		1594	1595
1683	4554-5	4555	4556
	5026-9	5030	5030
1694		5168, 5538,	Rej. 5540,
		5664	5665
1695		5538, 5664	Rej. 5550,
			5665
1696		5538,	Rej. 5540,
		5664	5665
1697			Rej. 6057
1698		5538,	Rej. 5540,
		5664	5665
1699 )			
1700 )			
1701 )			Rej. 6057
1702			
		5538,	Rej. 5540,
		5664	5665
1703			5217
1705	5474	5475	5475
1708		5539,	Rej. 5539,
		5664	5665
1710	5529	5530	5530
1711	5525-6	5526	5526
1713		5538,	Rej. 5540,
		5664	5665
1714		5538,	Rej. 5540,
		5664	5665



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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1968

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No. 624

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CLYDE A. PERKINS, *Petitioner,*

VS.

STANDARD OIL COMPANY OF CALIFORNIA, *Respondent.*

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On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit

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**REPLY BRIEF FOR PETITIONER**

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Petitioner Clyde A. Perkins was awarded \$336,404.57 in actual damages by a jury which found that respondent Standard Oil Company of California had unlawfully injured Perkins, in violation of Section 2 of the

Clayton Act, 15 U.S.C. § 13, by, *inter alia*, selling gasoline to his competitors at discriminatorily lower prices. The district court trebled the award and allowed Perkins \$289,000 in attorney's fees, for a total judgment against Standard of \$1,298,213.71. The Ninth Circuit set aside the jury verdict and remanded the case for a new trial.

In our main brief we argue for reversal of the court of appeals' judgment and reinstatement of the jury award and the district court's judgment. Standard contends that the Ninth Circuit should be affirmed and suggests, as an alternative, that the case be remanded to that court for further proceedings (see R. Br. 45, 54).<sup>1</sup> The overriding theme of Standard's brief, stripped of invective, is that there was no evidence to support the jury verdict. The overriding error in Standard's approach is its complete ignoring of the fact that "[t]here was . . . sufficient evidence to go to the jury and it is the jury which 'weighs the contradictory evidence and inferences' and draws 'the ultimate conclusion as to the facts' . . . ." See *Continental Ore Co. v. Union Carbide & Carbon Co.*, 370 U.S. 690, 700-01 (1962).

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<sup>1</sup> "R. Br. —" refers to the Brief for Respondent filed with this Court; and "P. Br. —" refers to the Brief for Petitioner. Respondent has lodged with this Court its Specification of Errors in the Ninth Circuit and all documents filed by Perkins in that court. We have lodged with the Court the following documents filed by Standard in the Ninth Circuit: Appellant's Opening Brief, Appendix I to Appellant's Opening Brief, Appellant's Reply Brief, and Response of Appellant to Petition for Rehearing and Motion for Clarification. The number of this case in the Ninth Circuit was 19,436.

**INTRODUCTION—THERE IS NO DISPUTE AS TO THE ESSENTIAL FACTS RELIED UPON BY PETITIONER IN ESTABLISHING STANDARD'S VIOLATION OF THE ORIGINAL SECTION 2 OF THE CLAYTON ACT.**

Petitioner's major contention is that the jury properly could have concluded that the effect of Standard's price discriminations against him (and in favor of Signal Oil & Gas Company) tended substantially to lessen competition in the Pacific Northwest wholesale and retail gasoline market (P. Br. 36-58). That contention is premised upon the following facts—none of which are, or could be, disputed in Standard's brief.

Standard sold gasoline to Perkins at higher prices than it charged Signal for gasoline of like grade and quality (P. Br. 13 and fn. 16). Signal resold that gasoline to Western Hyway Oil Company, its subsidiary, which, in turn, resold the gasoline to its subsidiary, Regal Stations Co. (*id.*, at 9). Regal, which operated retail stations in Portland, competed with stations owned and supplied by Perkins (*id.*, at 10).

In a short summary of the record evidence, the Ninth Circuit stated that Regal entered the Portland market "with a scale of prices well below that of other retailers and persisted in undercutting other retailers;" that the record contains "substantial evidence" that Regal's pricing policy started a deep and long sustained price war; and that the record contains "proof tending to show"—

"that the impact of Regal's price policy went far beyond Portland; that it precipitated and sustained a sort of chain-reaction throughout Perkins' entire marketing area, and that it adversely affected both the wholesale and retail business car-

ried on by Perkins." [A. 108-09 fn. 6; see P. Br. 16-17.]

During the price wars occurring throughout the claim period (March 1955-December 1957), Standard granted price subsidies to its Branded Dealers, who were retailers,<sup>2</sup> but declined to provide comparable assistance to Perkins (P. Br. 18; see Ex. 1523 A-CC, A. 605-30).

Standard was the price leader and principal gasoline supplier in the Pacific Northwest during the claim period (P. Br. 7); and Perkins was bound by contract to purchase the vast bulk, if not all, of his gasoline requirements from Standard (*id.*, at 46). From mid-1955 until he went out of business in December 1957, Perkins repeatedly notified Standard of the deteriorating price structure in his marketing area and requested price assistance (P. Br. 18-20). Standard repeatedly denied Perkins' requests for assistance (except for one small payment, *id.*, at 15 fn. 18) until Perkins went out of business (*id.*, at 18-19). And it did so despite the asserted belief of a high Standard official that Regal, because of its "better price," would "wreck" the Pacific Northwest gasoline market (*id.*, at 19 fn. 19).

Prior to going out of business in 1957, Perkins was one of the largest independent gasoline marketers in the Pacific Northwest, having a 2.4% market share (P. Br. 48). During the entire claim period the majors

<sup>2</sup> See A. 300 where Standard's counsel argued to the district court, in support of a successful motion to strike certain testimony, that Standard had "stated at the outset that a price assistance program was extended [to the Chevron Dealers]."



dominated that market, and the position of the independents had been declining (*ibid.*). When Perkins ceased operating he leased his business to a major, Union Oil Company of California, accelerating the independents' decline (P. Br. 7, 48).

At trial, Perkins' expert witness testified, in response to a hypothetical question covering the salient record evidence, that the foreseeable market trend was "toward increased concentration," "a continued decline of small business," and "higher [gasoline] prices" (A. 359-60; see P. Br. 49). In addition, the same witness observed that a long-sustained policy of discriminatory pricing can persist "only under conditions of some degree of monopoly power" (A. 353; P. Br. 50).

The above summary consists of the essential facts on which Perkins bases his contention that the jury properly could have found that Standard's price discriminations in favor of Signal not only injured Perkins in his competition with Signal, but also substantially lessened competition in the wholesale and retail marketing of gasoline in the Pacific Northwest, in violation of Section 2(a) of the Clayton Act, 15 U.S.C. § 13(a). Standard's failure to controvert these critical facts—considered in light of Standard's innumerable (albeit erroneous) accusations of factual misstatements in petitioner's main brief—makes clear that there is no significant dispute about the record evidence which this Court need resolve in order to reach the important legal questions raised by petitioner.

## II.

**THE RECORD CONTAINS SUBSTANTIAL EVIDENCE THAT STANDARD'S DISCRIMINATIONS AGAINST PERKINS PROXIMATELY CAUSED COMPETITIVE INJURY TO PERKINS AND A SUBSTANTIAL LESSENING OF COMPETITION IN THE RELEVANT LINE OF COMMERCE.**

All that is necessary to move from the undisputed facts discussed above to affirmance of the jury verdict and the district court's judgment is evidence of a causal connection between Standard's discriminatorily lower prices to Signal and the competitive injury to Perkins in particular and the Pacific Northwest gasoline market in general. The issue is whether "the record discloses *sufficient evidence for the jury to infer the necessary causal connection* between respondent's antitrust violations and petitioner's injury." *Continental Ore Co., supra*, 370 U.S., at 700 (emphasis added); see, e.g., *Sanitary Milk Producers v. Bergjans Farm Dairy, Inc.*, 368 F.2d 679, 689 (8th Cir. 1966). The record below contains more than enough proof to meet that requirement.

Standard's argument on this issue, repeated throughout its brief, is that there is no evidence that Standard's discriminatory price advantages to Signal were passed on to Regal, and therefore they could not have caused any competitive harm.<sup>\*</sup> Respondent begins this argument by claiming that the district judge failed to give an important instruction proffered by it at A. 96-97; and that it objected to this alleged error at A. 458 (R. Br. 5). While Standard did make the claimed objec-

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<sup>\*</sup> See R. Br. 4, 6, 9 fn. 6, 14 fn. 12, 20, 26-30, 33-34, 36-37 and fn. 38, 41, 48, 51.

tion, the district judge's charge in fact covered the pertinent instruction proposed by Standard at A. 96-97.

Respondent's Instruction No. 86 contains the following relevant sentence (A. 96-97):

"Unless plaintiff has shown by a preponderance of the evidence that a price advantage was given to Signal Oil and Gas Company by Standard, and that *this price advantage proximately caused, or substantially contributed to*, the adoption by Regal of those marketing methods which are claimed to have injured the business of Perkins . . . , plaintiff cannot recover for any such alleged injury." [Emphasis added.]

The charge given by the district judge on this point was as follows (A. 72-73):

"Members of the jury, under this burden of proof, the plaintiff must show by a preponderance of all of the evidence in the case that the claimed injury and resulting damage to the property and the business interest of himself, Perkins of Oregon and Perkins of Washington respectively, and the amount of such damage was *approximately* [sic] *caused* by some act or omission of discrimination on the part of the defendant Standard in violation of the act in any one or more of the particulars claimed by the plaintiff. In this connection, by way of a definition of the phrase 'proximate cause', you are instructed that an injury or damage to a plaintiff is *proximately caused* by an act or an omission on the part of the defendant whenever it appears that the act or omission played a substantial part in actually bringing about or causing the injury or damage and it further appears that the injury or damage was either a direct result or a reasonable, probable sequence of the act or omission." [Emphasis added.]

The court's instructions fairly presented the causation question to the jury, and no further elaboration was required. The record contains substantial evidence that Standard's discriminatory price advantages to Signal proximately caused or substantially contributed to the competitive injury wrought by Regal throughout the Pacific Northwest during the period from September 1956 through December 1957.

First, it is undisputed that Perkins paid Standard a higher price than Signal during the entire year 1957 (R. Br. 21 fn. 22),<sup>4</sup> and there was substantial evidence from which the jury could have concluded that Signal also paid a lower price than Perkins from the time of Signal's first liftings at Willbridge in Portland (in September 1956) through December 1956. While Signal's invoice prices may have been higher than Perkins' during the latter three months, in January 1957 Signal received a retroactive price adjustment of \$394,735 (Ex. 1550-B, A. 631; A. 441); the amount of that adjustment was directly based upon the gallonage delivered to Signal by Standard during a period including those three months (Ex. 1550C-1, A. 633); and the record contains evidence that Signal was aware during those three months that it would receive such an adjustment.

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<sup>4</sup>The trial judge was clearly correct in denying Standard's request that he charge the jury that a question of fact existed as to whether Standard had given Signal "a price advantage" (A. 97). As the judge instructed the jury, Standard's admission of its lower price to Signal had taken that issue out of the case: "It now appears that the evidence in this case is undisputed and that defendant Standard admits that Standard offered a lower price on both ethyl and regular gasoline to Signal Oil and Gas Company after December 31, 1956 than it did to plaintiff Clyde Perkins. Therefore, the plaintiff has proven that there has been price discrimination" (A. 63).



The Standard-Signal negotiations for a price adjustment to the favored purchaser, which culminated in the January 1957 retroactive adjustment, began in early 1955 at the behest of Signal, which was "demanding a lower price in gasoline" (A. 422). Those negotiations continued throughout 1955 and 1956 (A. 422-32). It became apparent to Standard officials during 1956 "that we would have to make some [price] concession if we wished to write a new contract and preserve that crude oil supply for us" (A. 433; see P. Br. 8-9). In the spring of 1956 Signal was made aware that only the amount of the price discount was in issue—with Standard being "unwilling to go as low as ..." Signal wanted—and that the Standard negotiator was "working on something that hadn't been approved by [his] people yet" (Tr. 5480, 5481, emphasis added).

While Signal was officially informed in January 1957 (by Mr. Godfrey of Standard) of respondent's decision—sometime after Standard had "approved making an adjustment" (A. 433)—the jury reasonably could have believed that Signal, like Standard, recognized earlier the inevitability of the adjustment ultimately approved, in view of Standard's communicated position in the spring of 1956 and its continued dependence on Signal's crude oil supply. This is particularly true since Mr. Godfrey, the Standard executive who officially notified Signal of the adjustment, obviously was not the only Standard official discussing this matter with Signal. Thus, while Mr. Godfrey believed (and told Signal) that Standard was "not obligated in any way to carry on with a similar adjustment in the future" (A. 434), unbeknown to him at the time, he "was a little wrong in that" (A. 434). His superiors at Standard had independently assured Signal "that the adjustment

will continue until they [Signal] are informed by Standard that it has been terminated" (see Ex. 1550 B-1, A. 632; A. 435).<sup>5</sup>

Tracing the causation chain farther, not only was Standard's price to Signal lower than Standard's price to Perkins, but the Regal retail outlets (serviced through Signal) sold gasoline at lower prices than the retail outlets supplied by Perkins. The price of gasoline, in short, was lower at both ends of the Signal distribution chain—going in at wholesale and coming out at retail.<sup>6</sup>

<sup>5</sup> The record evidence discussed in the text demonstrates the fallacy in Standard's repeated, carefully worded statements that proof of causation failed because "[w]hen Regal opened in Portland in September 1956, Perkins was buying gasoline from Standard for his market in Vancouver at a lower price than Signal was paying," and "the lower price to Signal . . . did not start until January 1957, four months after Regal had opened its first station and precipitated the price war . . ." (R. Br. 21, 28, emphasis in original).

<sup>6</sup> Standard argues that the causation link broke because the price differential against Perkins was less at the wholesale level than at retail (e.g., R. Br. 28). That argument is without merit. It was not necessary for the jury to trace the gasoline prices at all points in the Signal distribution chain in order to resolve the causation question in favor of Perkins, particularly in view of the family relationship existing among all entities in that chain of distribution (see P. Br. 54, 63-66). Beyond this, it has long been settled that a price discrimination is unlawful if it substantially contributes to the resulting competitive injury, even if it is not the sole causative factor, as the district court charged the jury (A. 72-73). Mr. Justice White summarized the law on this point in his concurring opinion in *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U. S. 134, 143-44 (1968), as follows:

"Normally, it would be enough with respect to causation if the defendant 'materially contributed' to plaintiff's injury, *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370

Regal's lower prices at the retail level "precipitated and sustained" price wars throughout the Pacific Northwest, as the Ninth Circuit acknowledged (A. 109 fn. 6). And, during those wars, Standard provided price assistance to its Branded Dealers located throughout the market, enabling them to lower their retail prices (Ex. 1523 A-CC, A. 605-30). Since Standard was the price leader in the market (Tr. 4940, 4945-46, 5628, 5630), other retailers then dropped their prices in response. As a Shell dealer in Portland testified, "it was Signal Oil [Branded Dealer] that we watched when we had two below us" (Tr. 503).

When Signal and the Branded Dealers thus depressed retail prices, Perkins, who was not receiving price assistance from Standard, was forced either to drop his prices and lower his profit margin or hold his prices somewhat firm and lose his customers—and the evidence established that both alternatives occurred. As Mr. Perkins testified (A. 155)—

"the two largest factors that we had in the decline of my purchases from the Standard Oil was the discontinuance of my deliveries to certain accounts. That was one of the big declines. And then the

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U. S. 690, 702 (1962); or 'substantially contributed, notwithstanding other factors contributed also,' *Momand v. Universal Film Exchanges, Inc.*, 172 F.2d 37, 43 (C.A. 1st Cir. 1948), *cert. denied*, 336 U. S. 967 (1949). The plaintiff need not show that the illegality was a more substantial cause than any other. *Haverhill Gazette Co. v. Union Leader Corp.*, 333 F.2d 798, 805-806 (C.A. 1st Cir.), *cert. denied*, 379 U. S. 931 (1964)."

Standard's reliance on rhetorical questions in its argument against causation (see R. Br. 33) is convincing proof of the lack of record evidence that any factors other than Standard's price discriminations against Perkins substantially contributed to his destruction.

other, and the thing that was—finally finished us up was the—the depressed market—retail market.  
...

The depressed market “finished” Perkins because prices plummeted so sharply that the major-minor differential of 2¢ could not always be maintained by the minors and, as a result, their “volume shrunk” (see Tr. 977, testimony of Mr. Logan about Westway Oil Company). As Mr. Perkins testified (A. 311)—

“when the price wars came on or the depressed market, we were unable to stay two cents below [the Branded Dealers]. Many times we had to even sell at the same price they were, and sometimes at a higher price.”

Standard’s price discriminations in favor of Signal and its price assistance to the Branded Dealers persisted throughout the claim period. And during that period Perkins’ business, which previously had been growing (A. 146), declined sharply, while Signal, by contrast, substantially increased its purchases from Standard (Ex. 23H, A. 523).<sup>7</sup> While Perkins did not,

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<sup>7</sup> Standard asserts, with no citations to the record, that Perkins’ business had been declining prior to the claim period (R. Br. 17 fn. 17), referring to a chart printed in the Brief of Appellee (p. 45) in the Ninth Circuit. Perkins, however, had explained to the court of appeals that the pre-1955 data on that chart had not been shown to the jury (*id.*, at 43 fn. 35). Ex. 93B, A. 542, was substituted therefor because pre-1955 data had been kept out of evidence by order of the district court upon objection of Standard (Tr. 2407-08).

The trial judge did permit Perkins to testify that his purchases from Standard declined after 1954 because he lost the Truax Oil Company account—“the largest account that I had which included one-third of my business through the Standard Oil” (A. 152). The jury was not advised that Perkins lost the Truax account to Standard in 1954, when respondent began to serve Truax directly—an action for which Perkins filed a suit for breach of contract. *Perkins v. Standard Oil Co.*, 235 Ore. 7, 383 P. 2d 107, 110, *mot. for modification denied*, 383 P. 2d 1002 (1963).



and obviously could not, explain which competitors gained each gallon of gasoline sales he lost, the record does contain specific evidence as to some of Perkins' lost business (A. 241, 249, 253, 254, 260; Tr. 590, 795-97) and general evidence that the motoring public purchased gasoline during periods of depressed prices at those stations offering the greatest savings (Tr. 709; A. 255).

The jury surely could have inferred from all this evidence what would appear to be obvious, that Perkins' decline in gallonage and Signal's gain had a direct relationship one to the other—with each being caused by Standard's discriminatory pricing policy. See *FTC v. Morton Salt Co.*, 334 U.S. 37, 46-47 (1948); *Lessig v. Tidewater Oil Co.*, 327 F. 2d 459, 471 (9th Cir. 1964), *cert. denied*, 377 U.S. 993 (1964). This inference is strengthened by the fact that Regal, which precipitated the price war, was the sole retailer of Signal's gasoline in the Portland area (R. Br. 11), and Perkins' marketing expert testified that the major impact on the market was caused by Regal's new concept of advertising its low prices on large signs (A. 275-76).<sup>8</sup> He further testified that the Regal-caused price disturbances probably would have cleared up had price assistance to other retail dealers been stopped (A. 277).

The substantiality of Perkins' evidence of causation is enhanced by two additional evidentiary items. First,

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<sup>8</sup> Standard, in discussing this witness' testimony, acknowledges his emphasis on "advertising," but makes a distinction between advertising in general and "gasoline prices" (R. Br. 34 fn. 33). The question to which the witness gave the answer summarized in the text, however, plainly combines the two items, relating to "this new concept of advertising prices" (A. 276, emphasis added).

during the Standard-Signal negotiations which resulted in the retroactive price adjustment (see *supra*, pp. 9-10), Mr. March (Signal's Vice-President of Marketing, A. 415) took the "position" that—

"unless he had a lower price from the Standard Oil Company, *he could not give his customers a lower price.*" [A. 432, emphasis added.]

Secondly, "in the fall, late fall of '56" (A. 188)—after Regal had opened its first station in Portland "in September 1956" (R. Br. 12)—two Standard executives acknowledged that Regal had "'a better price'" than Perkins in the Pacific Northwest, and they predicted that, as a result, Regal would "'wreck that market'" as it had done other places (A. 189; see A. 201).<sup>9</sup>

Surely the jury could fairly infer the existence of a causal connection which Standard officials themselves foresaw and predicted on the basis of considerably less evidence. The jury, in sum, reasonably could have concluded, in light of all the evidence, that Standard's discriminatory price advantages to Signal and its price assistance to the Branded Dealers proximately caused and sustained the Regal price wars—resulting in Perkins' demise and the concomitant lessening of competition in the Pacific Northwest gasoline market—especially since a key Signal marketing official wanted lower prices

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<sup>9</sup> Standard argues that because some words in the conversation described above (and in more detail at P. Br. 19 fn. 19) are in the future tense, the conversation "obviously took place before Regal entered the market in the Northwest with gasoline purchased from Western . . ." (R. Br. 27 fn. 25). The time periods quoted in the text, however, refute that argument, and Standard cites no evidence in support thereof.

precisely so he could "give his customers a lower price" (A. 432).<sup>10</sup>

Finally, Standard's repeated belittling of Signal's price advantages (see, *e.g.*, R. Br. 5, 10 fn. 7, 21, 28) deserves brief response. Perkins' gross profit per gallon of gasoline during the claim period was 1.54 cents (Tr. 3653-54). There was evidence at trial that no jobber could survive with a gross margin below 2 cents (A. 364-65; Tr. 1001; see Tr. 3656-58). Had Perkins been paying the same price as Signal his gross profit would have risen to about 2.2 cents per gallon (see Ex. 82C, 82D, A. 529, 530), and he would at least have had a chance of survival.

### III.

#### **PETITIONER PRESERVED IN THE COURT OF APPEALS HIS CONTENTION THAT STANDARD'S DISCRIMINATIONS AGAINST HIM SUBSTANTIALLY LESSENED COMPETITION IN THE PACIFIC NORTHWEST GASOLINE MARKET.**

Standard does not controvert our legal argument that its discriminations in favor of Signal are actionable under the Clayton Act's original Section 2 prohibition of price discriminations whose effect "may be substan-

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<sup>10</sup> In 1956, Signal offered Perkins lower prices (3/4¢ lower on regular gasoline and 8/10¢ on ethyl) than Standard (A. 185-86). Standard argues that Perkins' failure to accept that offer "would negate injury from Standard's price" (R. Br. 33 fn. 31). However, at the trial, Perkins was asked by his counsel, "why didn't you make a contract with them [Signal] at that time?" Standard's counsel objected on the ground that it "is completely irrelevant and immaterial as to why this person didn't make a contract with Signal Oil & Gas Company in 1956." (Tr. 348.) Perkins went on to explain the reason: that the Signal official later said, "'Well, you know, Mr. Perkins we buy our gas from Standard Oil.'" The jury was instructed to disregard that statement after Standard's counsel objected to it. (Tr. 349.)

tially to lessen competition . . . in any line of commerce" (P. Br. 38-45). Nor does Standard controvert our contention that, on the facts in the record, the jury properly could have found that Standard had transgressed that prohibition (*id.*, at 46-54), except to refer to its "lack of causation" theory (see R. Br. 37) which we have refuted above. Standard's sole argument on this issue, which it also made in its brief in opposition to the petition for certiorari (p. 11), is that the court of appeals had no opportunity to decide the question (R. Br. 36). That argument is without merit.

The trial judge's charge to the jury, as well as Standard's and Perkins' requested instructions, covered the original Section 2 provision (P. Br. 37 and fn. 29). After losing before the jury, Standard made the following legal argument in the court of appeals (Appellant's Opening Brief, p. 41):

"Under section 2(a) of the Act, a price discrimination is actionable only (15 U.S.C. 13(a)):

"\* \* \* where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition *with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.*"

"The above language is clear and its application just as clear. Price differentials between purchasers are actionable *only* when the adverse competitive effect occurs on the level of competition with the seller (Standard), with the seller's favored customer (Signal Oil and Gas Company), or with the purchaser from the seller's favored customer (Western Hyway). A claim based on injury to competition with a customer further removed (Regal) is not actionable." [Emphasis in original.]



As the above quotation makes plain, while Standard did not highlight the original Section 2 prohibition, neither did it ignore that prohibition—as indeed it could not reasonably do, since the issue had been presented to the jury. Fairly read, Standard's position in the Ninth Circuit was that the functional level limitations of the Robinson-Patman amendments modified the "substantially to lessen competition" test of the original Section 2 as well as the "injure, destroy, or prevent competition" test of those amendments.

Perkins, responding to Standard's appeal, argued that Standard's discriminations, in addition to specifically disadvantaging him as a competitor of Signal and the Branded Dealers, also lessened competition throughout the entire Pacific Northwest market, aggravating existing tendencies toward monopolization (Brief for Appellee, *e.g.*, pp. 28-31, 38-42). As part of his argument for affirmance of the district court's judgment, Perkins pointed out that the judge had noted that the question whether the entire Pacific Northwest market had been "upset" by Standard's discriminations was a key issue for the jury to decide (Tr. 3555, quoted at Brief for Appellee, p. 63):

"If the jury accepts some of the evidence in testimony of the plaintiff, the whole Western market from Olympia [Washington] to Roseburg [Oregon] was affected . . . . I don't know if they are going to accept it or not, but there is evidence in the case which would warrant that. Now, if they do, that is, the whole marketing area. It is a question for the jury." [Fn. omitted; see map at P. Br. 80.]

Moreover, Perkins stressed in the Ninth Circuit the same facts he relies upon in this Court. For example,

he observed below that "Standard was the acknowledged price leader in the Pacific Northwest;" that "Standard sold nearly 30% of the gasoline in the Northwest;" that "[t]he flow of products into the Northwest was controlled almost exclusively by major oil companies;" that "[t]he relative importance of independent jobbers has declined;" and that his expert economist had testified "that under price discrimination the normal trend would be towards increased concentration and acceleration of oligopolistic trends and continued decline of small business with the ultimate tendency for prices to be raised to the consumer" (Brief for Appellee, pp. 38, 39, 40, 41).

In the same vein, when petitioning for rehearing Perkins argued that this Court in the *Van Camp* decision had expressly rejected a functional level limitation on the reach of Section 2 of the original Clayton Act, focusing instead on commercial realities to determine whether competition had been lessened in any realistic market.<sup>11</sup> In denying rehearing, the Ninth

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<sup>11</sup> "As originally written, 2(a) proscribed discrimination where it may 'lessen competition or tend to create a monopoly in any line of commerce.' It had no 'functional level' limitation. The Supreme Court explicitly rejected reading such limitation into § 2(a) in the only case posing that question (*Van Camp v. Am. Can. Co.*, 278 U.S. 245 (1929)). The Court held it applied to discrimination in both buyer and seller lines, and that:

"These facts bring the case within the terms of the statute, unless the words "in any line of commerce" are to be given a narrower meaning than a literal reading of them conveys. The phrase is comprehensive and means that if the forbidden effect or tendency is produced in *one* out of *all* the various lines of commerce, the words "in *any* line of commerce" literally are satisfied' (p. 253).

"The line of commerce in which Perkins and [Signal] competed was functionally similar to *Van Camp*." [Answer of Appellee to Response to Petition for Rehearing, p. 6.]

Circuit expressly stated that Perkins' petition "[e]ssentially . . . is *nothing more than a repetition of arguments* concerning assignments, which we are satisfied were all adequately considered and *correctly passed upon by our written opinion*" (A. 103, emphasis added). Thus, this issue was properly submitted to the jury and preserved in the court of appeals. Contrary to Standard's contention, the Ninth Circuit was not denied a fair opportunity to appraise and resolve the question. By failing to resolve it in favor of Perkins, that court erred.

#### IV.

#### **THE JURY PROPERLY COULD HAVE FOUND THAT STANDARD'S DISCRIMINATORILY LOWER PRICES TO SIGNAL VIOLATED THE ROBINSON-PATMAN AMENDMENTS TO SECTION 2 OF THE CLAYTON ACT.**

##### **A. Perkins and Signal Were Competitors**

"Within his territory Perkins operated as a jobber . . ." (R. Br. 16). Signal, in its operations in the Pacific Northwest, also was "a jobber, so far as gasoline is concerned" (A. 285-86). It is our position that because the Regal retail outlets, which Signal serviced through Western Hyway, competed with retail outlets serviced by Perkins (P. Br. 59), the jury could have found that Perkins and Signal were competitors at the jobber or wholesale level. As the district judge observed out of the presence of the jury (Tr. 445):

"Well, I am satisfied that the competition is between Perkins and Signal Oil, because if their ultimate market is destroyed, their market is destroyed. They go out of business."

Standard argues that the above facts are insufficient, as a matter of law, to establish that Perkins and Signal

were in "competition" within the meaning of the Robinson-Patman Act. The short answer is that *Ingram v. Phillips Petroleum Co.*, 259 F. Supp. 176 (D.N.M. 1966), and *McCormack v. Theo. Hamm Brewing Co.*, 284 F. Supp. 158 (D. Minn. 1968), squarely hold that price discriminations between wholesalers are actionable under Section 2(a), on a secondary line theory, even though the favored and disfavored purchaser each resells to retailers before any direct competitive confrontation occurs. None of the cases cited by Standard is to the contrary (see R. Br. 38-39).<sup>12</sup> Furthermore, Standard misconceives the thrust of our argument in contending that if it is adopted "every non-primary-line Robinson-Patman case [will be] a secondary-line case" (see R. Br. 41). That is not true. Adoption of our argument would merely mean that some cases involving price discriminations *between wholesalers whose retailers are in direct competition* would be secondary line cases—a result plainly within the intendment of Congress and the wording of the Robinson-Patman amendments.

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<sup>12</sup> For example, *Davidson v. Kansas City Star Co.*, 202 F. Supp. 613, 618-19 (W.D. Mo. 1962), *rev'd on other grounds*, 336 F.2d 439 (8th Cir. 1964), merely holds that a price discrimination is not actionable where there is no competition or possibility of competition at any functional level. The consent decree in *Shell Oil Co.*, 54 F.T.C. 1274 (1958), which Standard mislabels as a Federal Trade Commission holding, appears to be explainable on the same basis, although the agency published no substantive opinion. While the legal issue raised here perhaps could have been presented on the facts of *E. Edelmann & Co.*, 51 F.T.C. 978 (1955), the hearing examiner's opinion, on which Standard relies *sub silentio* (*id.*, at 983-84), gives no indication that it was in fact raised.



### **B. Signal's Control Over the Activities of Western Hyway**

Standard argues that Perkins "cites no record reference" (R. Br. 43) for one of the key facts in his argument on this point—i.e., Signal's and Standard's ignoring of Western Hyway's separate corporate existence provided a reasonable basis upon which the jury could have inferred that Signal, in the circumstances pertinent here, controlled Western Hyway to the extent necessary to attribute to Signal that subsidiary's sales to Regal (P. Br. 63-66). In fact, we cited the following evidence to support that point: Ex. 1707, 1709, A. 653, 655; A. 438-439; Tr. 5526-27 (P. Br. 64)—evidence which Standard conveniently ignores. Further, in explaining a memorandum which reflected Signal's efforts to extract a yet lower price from Standard because Western Hyway assertedly had been offered a discounted price by two companies called Hancock and Norwalk, Mr. Godfrey of Standard distinguished the latter firms as "independent companies" while describing Western Hyway as "an affiliate of Signal Oil and Gas Company" (A. 423-24).<sup>13</sup>

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<sup>13</sup> In support of its contention that "Western acted quite independently of Signal," Standard argues that Western "by 1957 bought more than 50 per cent of its total volume from other suppliers . . ." (R. Br. 44 fn. 45, referring to R. Br. 11). Standard fails to point out, however, that all the gasoline Western supplied Regal during the claim period came from Signal (A. 394). Western's purchases from other suppliers occurred in California (Ex. 1711; A. 657; Ex. 1458D).



**THIS CASE SHOULD NOT BE REMANDED FOR  
FURTHER PROCEEDINGS.**

Standard argues that the district court made errors in its rulings relating to (a) the computation of damages, (b) Standard's price assistance to the Branded Dealers, and (c) respondent's alleged Section 2(b) defense; that the court of appeals did not pass upon some of its contentions on these points; and that it therefore would be inappropriate for this Court to reinstate the verdict without first remanding the case to the court of appeals to "review this voluminous record" (R. Br. 45). That argument is without merit, and no large scale review of the record is necessary to dispose of it.

**A. The Evidence of Perkins' Damages**

(1) The Ninth Circuit set aside the jury verdict because an indeterminate portion of the award "necessarily" reflected harm caused Perkins by Regal—harm which the court did not consider actionable (A. 108-09). We contend that all of the Regal-caused damages would be properly includable in the verdict should the Court reverse the Ninth Circuit's legal conclusion as to Regal, and Standard does not argue to the contrary.

The only damage question the court below resolved against Perkins involved some items of evidence which the court believed affected his individual claim (treating Perkins as a "landlord"), but not the claims of his two corporations (A. 112-13). We contend that the Ninth Circuit's decision was erroneous (P. Br. 69-77), and Standard says not one word in its defense. Standard's silence in this Court is in sharp contrast to its argument in the Ninth Circuit, where the "land-

lord" point was briefed at considerable length (see Appellant's Opening Brief, pp. 66-74).

Finally, the court of appeals decided a critical damage question in favor of Perkins—that he was entitled to recover damages for the diminution in the goodwill or going concern value of his business (A. 113). At trial, evidence was introduced that, as a result of Standard's discriminations in favor of Signal alone, the going concern value of the service stations owned by Perkins decreased by \$136,441, and the going concern value of the stations he leased from others decreased by \$29,915 (Ex. 82J, 82L, A. 535, 536)—totalling some \$20,000 less than the jury award to him individually. These figures were predicated upon a conservative formula utilized by petitioner's expert witness, Mr. McDaniel, a partner in the accounting firm of Haskin & Sells (Tr. 3586). The record evidence was that a fair formula for ascertaining going concern value could range from \$1.00 to \$1.50 per average monthly gallonage, both for the stations owned by and leased to Perkins (Tr. 1106-10, 1188-90).

Mr. McDaniel steered a middle course. He utilized \$1.25 per monthly gallonage as to the stations owned by Clyde Perkins (Ex. 82J, A. 535) and, as to the stations leased to him, McDaniel used both \$1.25 and \$0.75, for two alternative computations resulting in total losses of \$49,857 and \$29,915, respectively (Ex. 82L, A. 536; Tr. 3714-45). When the \$49,000 figure is added to the \$136,000 figure in Ex. 82J, the result closely approximates the jury's total award of \$185,000 to Clyde Perkins individually (see A. 101). Moreover, as pointed out above, the testimony would support use of a \$1.50 factor as to the stations owned by petitioner,

permitting the jury to assess damages to their goodwill at \$163,729 rather than \$136,441 (Tr. 1106-10). In short, the record evidence of goodwill damages would sustain a jury award on Clyde Perkins' individual claim considerably in excess of that actually granted.

The above discussion, without more, demonstrates that the record contains substantial evidence to support the jury award and to prove that the award was reasonable. In fact, Standard does not argue that the damages awarded were unjust or unreasonably high, and the Ninth Circuit did not so find. In these circumstances affirmance of the jury verdict is required. See cases cited at P. Br. 71-72. "The rule is clear that on appeal from a judgment based upon a jury's verdict, the verdict and judgment based thereon will be sustained if there is substantial evidence in the record in support thereof. We are required to view the evidence in a manner most favorable to the prevailing party...." *Richfield Oil Corp. v. Karseal Corp.*, 271 F.2d 709, 712 (9th Cir. 1959), *cert. denied*, 361 U.S. 961 (1960).

Standard's basic objection to Perkins' recovery for diminution in the going concern value of his business is that Perkins realized no loss because he did not sell his operations (R. Br. 52). No case holds that disposal of the diminished assets is a prerequisite to recovery for the diminution in value caused by an anti-trust violator. *Volasco Products Co. v. Lloyd A. Fry Roofing Co.*, 308 F.2d 383 (6th Cir. 1962), *cert. denied*, 372 U.S. 907 (1963), holds only that where a plaintiff had recovered damages for lost profits and obtained an injunction against future violations, additional damages for diminution in the value of its business would, on the facts there presented, result in a double re-

covery. Compare *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555 (1931); *Atlas Building Products Co. v. Diamond Block & Gravel Co.*, 269 F.2d 950 (10th Cir. 1959), *cert. denied*, 363 U.S. 843 (1960). No double recovery was possible in the instant case, however, because the judge instructed the jury that "you cannot award [Perkins] damage for loss of good will . . . and also award him damage for loss of net profits due to the loss of sale or the loss of customers because to that extent they would be implicit or making them double profits" (A. 69).

Little more need be said. Standard's remaining objections relate to Perkins' damage computation exhibits, not the underlying damage evidence (see Perkins' business records, *e.g.*, Ex. 283A). Those objections are immaterial, for the trial judge plainly charged the jury that the charts, diagrams and summaries prepared by Perkins' accountant "are not in and of themselves evidence or proof of any fact," and that "unless you find that they are true summaries of facts and figures shown by the evidence in the case, you are to disregard them entirely" (A. 77).

(2) In any event, none of Standard's objections is well taken. First, Standard complains that several of the exhibits assumed that Perkins' sales would have increased "ten per cent per year but for the alleged discriminations" (R. Br. 50). That precise assumption was explicit in Standard's contracts with Perkins. Each contract provided that Perkins must use his "best efforts" to sell a specified quantity of gasoline in his first year of operation thereunder; that the quantity requirements for the remaining years included "the immediately preceding contract year's specified



quantity for the products involved, *plus 10%;*" and that Standard could terminate if Perkins failed to fulfill his best efforts obligation (Ex. 2, A. 494; see Ex. 102, A. 550) (emphasis added). The jury certainly could have concluded, in light of all the evidence (see Tr. 2865, 3643, 3649-50), that Standard would not have imposed this burden upon Perkins unless Standard reasonably believed that his sales were likely to increase by 10% each year.

Secondly, Standard complains that there was no evidence to support the admission of Ex. 82G-2, A. 534, and Ex. 82O, A. 539, which compute losses for the decline in value of Perkins' fuel oil business (R. Br. 51-52). The short answer is that Allen Perkins, who worked with petitioner in his business, testified that there was a "direct relationship" between gasoline and fuel oil sales (A. 370),<sup>14</sup> and the accuracy of that testimony was corroborated by the parallel decline of Perkins' gasoline and fuel oil sales (compare Ex. 93B, A. 542, with Ex. 93C, A. 543). The jury was not compelled to disbelieve the above evidence, as Standard suggests, merely because one service station's business ran counter to the trend (see R. Br. 52 fn. 62).

Finally, Standard complains that the "captions [of Ex. 82J and Ex. 82L] were misleading and they included business other than that done at service sta-

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<sup>14</sup> He explained as follows (A. 370):

"The great majority of our heating oil business was sold through our gasoline distributors. In other words, they sold heating oil as well as gasoline. When they quit purchasing gasoline, why, they quit purchasing heating oils at the same time. In other words, they wouldn't quit us and buy gasoline from somebody else and continue to buy our heating oils."



tions" (R. Br. 52). The captions of those exhibits, in fact, were straightforward descriptions of their contents: "Computation of loss in value of business" (A. 535, 536). And the ensuing computations were premised solely on gasoline "gallonege" (*ibid.*).

Standard's complaints, in short, are not only without merit; they are prototypes of the kinds of complaints it is peculiarly within the province of the jury (and the district judge) to resolve. See, *e.g.*, *North Texas Producers Ass'n v. Young*, 308 F.2d 235, 244-45 (5th Cir. 1962), *cert. denied*, 372 U.S. 929 (1963); *Ford Motor Co. v. Webster's Auto Sales, Inc.*, 361 F.2d 874, 886-87 (1st Cir. 1966). Those complaints need not be reweighed by this Court, for respondent's determined search for error requires reading of the record "with a microscopic eye"—a procedure contrary to settled principles of appellate review of jury awards. See *Flinthkote Co. v. Lysfjord*, 246 F.2d 368, 393-94 (9th Cir. 1957), *cert. denied*, 355 U.S. 835 (1957).

#### B. The Branded Dealers

(1) We submit that the short answer to Standard's issues regarding the Branded Dealers is that the court of appeals resolved those issues against respondent. Thus, the court observed (A. 107):

"The Branded Dealers purchased gasoline and oil from Standard which they in turn sold at retail. With respect to them, Perkins' story is quickly told. Because of Standard's favoritism and discrimination they were able to and did offer lower prices and better services and facilities than Perkins in marketing at retail."

While that quotation is not unambiguous, when read in the context in which it appears in the court's opinion it

must be either a repetition of Perkins' contentions—which the court stated in detail in the immediately preceding paragraph (see A. 106-07 and fn. 3)—or a holding in favor of Perkins. The latter construction is the more reasonable one, since the court's holding as to Signal-Regal begins in the paragraph immediately following the quoted language (see A. 107-08). Later in its opinion, after some unrelated holdings, the court of appeals expressly ruled that “[n]either did the [district] court err in submitting to the jury Perkins' claims based upon Standard's 2(d) and 2(e) violations” (A. 111). The court's statement that Perkins could recover such damages only to the extent he operated as a retailer (A. 111-12) was no more than a “cautionary observation” directed toward the new trial, as the court pointed out in its opinion on rehearing (A. 103). That statement in no wise detracted from the plain ruling quoted above.<sup>15</sup>

(2) In any event, none of Standard's substantive allegations of error regarding the Branded Dealers is well taken. First, the trial judge charged the jury

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<sup>15</sup> The only Section 2(d) and 2(e) issues in the case involve the Branded Dealers (A. 47, 106-07; P. Br. 22, 31-32). While the record contains evidence that the Regal stations, which obtained Standard gasoline through Signal's distributive chain, advertised that they sold major brand gasoline and honored the majors' credit cards, the trial judge charged the jury in the course of his instructions on damages to disregard that testimony as irrelevant (A. 70). While Standard assails petitioner's reference in his statement of facts to that testimony about “price-related” benefits to Signal-Regal (see R. Br. 6, 14-15 fn. 13), petitioner nowhere argues that Standard violated Section 2(d) or 2(e) in its dealings with Signal. Moreover, the fact that Regal advertised major brand gasoline and acceptance of major credit cards was before the jury in photographs of the Regal stations (see Ex. 106C, A. 559), which Standard itself cites as evidence of Regal's “well-advertised” stations (R. Br. 12).

that in order for Perkins to recover for price discriminations in favor of the Branded Dealers the jury must first find that those Dealers paid Standard a "final net price which was *in fact lower* than the final net price computed in like fashion which defendant Standard charged plaintiff, Clyde Perkins . . ." (A. 58, emphasis added).<sup>16</sup> Continuing, the judge said that (A. 59)—

*"as a matter of law that there is not discrimination in price if the price charged by Standard to two purchasers are identical even though in one case the price has been firmly agreed upon in the contract while in the other the contract price was higher but was reduced by a contemporaneous or later adjustment, such as a temporary allowance. In other words, a purchaser receiving the same price as other purchasers cannot complain merely because he has no contractual assurance that the cut price will continue in the future for any definite period of time while in the case of other purchasers such contractual assurance exist."* [Emphasis added.]

The judge's charge on this point was, if anything, more detailed and favorable to Standard than its requested instruction that "[a] discrimination in price would occur only if, after taking into account price assistance payments to dealers, the net price to such dealers was lower than the net amount paid over to Standard for the same products by Clyde Perkins, or Perkins Oil Company of Oregon and Perkins Oil Company of Washington" (A. 86). In these circumstances it is difficult to understand Standard's complaint that the

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<sup>16</sup> The judge also instructed the jury that in determining the applicable final net prices it must take "into account all discounts, rebates, allowances, adjustments, and taxes if any there be which were a part of the terms of the sale or later allowed and granted at any time within the claim period" (A. 58).

judge's charge "permitted the jury to award damages to Perkins because of Standard's price assistance policy, even though the prices to dealers were higher than those paid by Perkins" (R. Br. 46).

Secondly, Standard admits its own evidence establishes that five Branded Dealers paid a lower price than Perkins during the claim period (R. Br. 6 fn. 3, 13 and fn. 11). While Standard finds these discriminatorily lower prices to be "inconsequential" and "immaterial," there is no question that the jury could have found them to be unlawful.<sup>17</sup>

Beyond this, the record contains substantial evidence from which the jury could have found that Standard's admitted price discriminations did not tell the whole story. Thus, an operator of a Branded Dealer station in Roseburg testified that he had received price assistance from Standard of approximately 7 cents per gallon (A. 247)<sup>18</sup>—an amount higher than any listed

<sup>17</sup> The evidence of Standard's 2(d) and 2(e) violations is also set forth in its brief but characterized as *de minimis*. "Standard's branded dealers made sales on Standard's credit cards and could earn an allowance of one-quarter cent per gallon for maintaining clean restrooms" (R. Br. 14, fn. omitted). Standard also acknowledges the record evidence that it painted one dealer's station and granted him advertising allowances (R. Br. 15 fn. 13). Here again, the violation is clear, and the jury certainly was not bound to accept Standard's denigration of the uncontroverted evidence. See, in this regard, P. Br. 15.

<sup>18</sup> Standard argues that this dealer admitted, on cross examination, that "he could be wrong" in his testimony summarized above (R. Br. 14 fn. 12). The dealer in fact testified that "[i]t is possible anyone could be incorrect" (Tr. 641). When shown a document which Standard's counsel purported to prove him wrong, he said that "[i]t doesn't make me believe it yet" (Tr. 640) and: "I could be wrong. I could be wrong. This sheet could be wrong. I see nothing here to say that this is the God's fact; there is nothing here, there is no sale on this paper."



on Standard's Roseburg exhibits (see Ex. 1523 H-J, P-Q, A. 612-14, 619-20). A distributor to Standard's Branded Dealers in Centralia also testified that, "[a]t any time there was a price disturbance," he allowed his retailers discounts of  $4\frac{1}{2}$  cents per gallon (Tr. 560)—an amount which appears infrequently on Standard's Centralia exhibits (see Ex. 1523 L-M, X-CC, A. 616-18, 625-30).

In addition, the key to Standard's contention that its price assistance program never amounted to actionable discrimination is its assertion that Perkins' price to Standard was figured on the posted tank truck price (the price to retail dealers) less a 4 to  $5\frac{1}{2}$  cent per gallon discount, while Standard's price to its Dealers was generally the tank truck price itself (R. Br. 45-46). The fallacy in Standard's syllogism is its failure to point out that during periods of depressed retail prices the Branded Dealers received price assistance based *on the difference between the retail price and the posted price*, not the posted price alone—with the price assistance to the Dealers increasing as the retail price dropped (see A. 214, 218). Moreover, Standard's price adjustment sheet, which sets forth its adjustment formula, makes clear that whenever the posted price was higher than the retail price, the Branded Dealers would get a greater discount than Perkins on regular gasoline, necessarily lowering their price below his (Ex. 93M, 343B, A. 547, 577). During the claim period the posted price from time to time dropped below tank wagon (A. 234; Tr. 630), with retail prices falling considerably lower than any of the prices stated on Standard's exhibits (Tr. 583, 630-32; Ex. 1523 A-CC, A. 605-30).

Standard's remaining complaints as to the Branded Dealers deal with damages. On that issue the judge charged the jury, in part, as follows (A. 67):

"I should instruct you that as a matter of law you *cannot* compute damages by merely *taking the difference between the price alleged to have been paid by Clyde Perkins* or by the two Perkins corporations or any of them for gasoline to Standard and the price charged the most favored purchaser from Standard *and by then multiplying the number of gallons* which Standard supplied to them by this difference.

"The law allows you coverage only for damages actually sustained by reason of the violation of the Act, and therefore the mechanical price difference as such in and of itself is not the proper measure of damage from the facts in this case." [Emphasis added.]

Here again, it is difficult to perceive the basis for Standard's assertion that the "trial court's instructions permitted the jury to award damages under Sections 2(d) and 2(e) measured by Perkins' entire wholesale gallonage" (R. Br. 47). As the above quotation makes plain, the judge's charge expressly precluded any such recovery. While the judge correctly permitted the jury to take into account the "amount of the price differential" in assessing damages (A. 66), he precluded the jury from multiplying that amount by Perkins' entire gallonage (A. 67).<sup>19</sup>

Finally, Standard asserts that it cannot be held responsible for trade diverted from Perkins to retail outlets operated by others than the Branded Dealers

<sup>19</sup> Thus, the trial judge in effect instructed the jury not to base any damages on the computations in Ex. 82 B, A. 528, rendering superfluous Standard's objections thereto (see R. Br. 48-49).

(See R. Br. 48, 51 fn. 60). That clearly is not the law. Where, as here, causation is established (see *supra*, pp. 8-15), the proper measure of damages is "how much worse off [Perkins] is because others have paid less" (*ICC v. United States*, 289 U.S. 385, 390 (1933)), not how much better off the favored purchasers are. Surely Perkins' recovery for damages sustained during deep price wars caused by Standard should not be limited because the favored purchasers might not have profited as much during those wars as they (and Standard) would have liked (see A. 65).<sup>20</sup>

<sup>20</sup> In the same vein, Standard argues that no damages can properly be assessed against it for petitioner's losses in the Centralia area prior to the fall of 1956 when the Regal price wars spread throughout the Pacific Northwest (see R. Br. 51). This argument is premised on an assertion that "[t]here was no evidence that Signal sold gasoline to anyone in Centralia, directly or indirectly" (R. Br. 19 and fns. 19, 20, 21). That assertion and the conclusions based thereon are contrary to the record evidence. Signal sold Standard gasoline to one B. F. Harris who resold to two of Perkins' large retail accounts in the Centralia area (the town of Centralia and the surrounding area). After Harris began supplying those accounts, Perkins lost their patronage. Signal's price to Harris was considerably below the price at which Perkins could sell to his former accounts, because Signal provided Harris with "big" price adjustments—one of which amounted to over \$40,000. (A. 157, 362-65, 382-83; Tr. 256, 267, 1055, 1059-60, 1065-69, 1348, 1681-82, 1688-89, 2920-21, 3081-84, 3390-95; Ex. 284A, 284B, A. 563, 565.) The fact that Harris subsequently lost one of those accounts to another supplier (R. Br. 19 fn. 20) does not detract from the fact that Perkins lost it to Harris (Tr. 3455).

The level of Standard's discourse about the Centralia area (and the record in general) is fairly reflected in its statement that "[p]etitioner says Signal entered the Centralia market as a wholesaler (Pet. Br. 14), but the cited record references do not support that assertion," listing Tr. 2988, 3080-81 (R. Br. 19 fn. 19). Petitioner in fact cited, *inter alia*, Tr. 2988 and 3081-84 (P. Br. 14), with the critical point appearing at Tr. 3083 (Perkins' former customer in Centralia had in his possession invoices bearing "the printed heading of Signal Oil and Gas," which were attached to Harris' invoices).

### C. Standard's Meeting Competition Argument

In reviewing the facts underlying Standard's alleged Section 2(b) defense (R. Br. 8-10, 53-54), it is important to stress what Standard omits: that to the extent Union Oil Company made any gasoline sales to Signal during the entire claim period, not one drop was sold in the Pacific Northwest (A. 444; Tr. 5703-04; Ex. 1703, A. 649);<sup>21</sup> that the asserted offer by Union in 1956, upon which Standard relies (R. Br. 53), pertained only to California (A. 428; Ex. 1705, A. 651); and that most of the excluded exhibits mentioned by Standard (R. Br. 53) specifically refer only to California, and none mentions the Pacific Northwest. Finally, Standard relies in part on offers to Signal by Westway (Ex. 1705, A. 651), a wholly owned subsidiary of Union Oil (A. 263), in asserting that respondent was meeting competition. But Westway sold Union's house brand gasoline, which was of lower quality and had a lower octane value (Tr. 881). Standard had no Section 2(b) defense, and the jury properly rejected its argument. See also, P. Br. 66-68.

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The jury verdict in favor of Perkins was rendered more than five years ago (A. 5), and Standard's discriminations occurred between 12 and 14 years ago. The opinion of the court of appeals was entered almost two and one-half years after oral argument, and disposition of the petition for rehearing took another five months (A. 7). The orderly administration of justice requires that the important questions raised by petitioner be resolved by this Court at this time.

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<sup>21</sup> The only sales Union made to Signal in 1956 were in Phoenix, Arizona; it made no sales to Signal in California prior to September 1957 (Ex. 1703, A. 649).



**CONCLUSION**

The judgment of the Ninth Circuit should be reversed. The judgment of the district court should be affirmed, and the award to petitioner of \$1,298,213.71 in damages and attorney's fees should be reinstated.

Respectfully submitted,

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April 1969

APPENDIX<sup>a</sup>

EXHIBIT NUMBER	OFFERED	RECEIVED IN EVIDENCE
1458D	5618	5619
1523A-J	4542	4543
1523K, L, M	4542	4542
1523N-CC	4545	4546
1550B	5493	5496
1550B-1	5493	5496
1550C-1	4321	4361
1703	5217	5217
1705	5475	5475
1711	5526	5526

\* This Appendix does not list those exhibits which also were cited in petitioner's main brief.



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**No. 624**

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**JOHN F. DAVIS, CLERK**

**In the Supreme Court of the  
United States**

**OCTOBER TERM, 1968**

**CLYDE A. PERKINS, *Petitioner***

**v.**

**STANDARD OIL COMPANY OF CALIFORNIA**

**ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT**

**Petition for Rehearing**

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# In the Supreme Court of the United States

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CLYDE A. PERKINS, *Petitioner*

v.

STANDARD OIL COMPANY OF CALIFORNIA

---

*ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT*

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## **Petition for Rehearing.**

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Most respectfully, respondent prays for a rehearing of that portion of the Court's opinion which orders a remand, with directions to enter judgment for petitioner.

### **REASONS FOR GRANTING A REHEARING**

On June 16, 1969, this Court reversed the Court of Appeals on the principal question decided below—namely, whether a fourth line price discrimination is proscribed by section 2(a) of the Clayton Act. We accept the ruling of this Court on this question of law, which was the basis of the petition for certiorari, and which was argued before the Court. We submit, however, for the reasons hereinafter set

forth that the case should be remanded to the Court of Appeals.

We begin with the last paragraph of the Court's opinion:

"Respondent has argued in its brief several minor trial rulings which it contends were in error. Most of these additional arguments were rejected by the Court of Appeals. We have examined the others and find them without merit. We therefore see no need to prolong this litigation which began nearly 10 years ago. The jury's verdict and judgment should be reinstated. *It is so ordered.*"

We agree with the Court that this case has been pending entirely too long. But, in fairness, that is not our fault. We are not to blame for the 2½ years during which the Court of Appeals held the case under consideration. Nor are we chargeable with the fact that the case had to be tried twice, because petitioner's counsel induced a mistrial by his misconduct before the jury.

In the Court of Appeals respondent urged numerous prejudicial errors. On some of these the court below sustained respondent's contentions. In view of its ruling on the narrow issue of law the court below said that it would not pass upon other errors, stating its confidence that they would not occur on a retrial:

"Other assignments urged by Standard in its brief involve matters not likely to occur during the course of another trial and we therefore, in order to avoid unduly prolonging this opinion, do not discuss them. Our failure to do so, however, is not to be taken as an appellate approval of every ruling not specifically discussed herein" (A. 117).

These assignments were proper grist for decision in the lower appellate courts. They were not matters of far-reaching significance in terms of this Court's function of

review, but were of vital importance to the parties, and to the integrity of the verdict.

Some of these additional issues we did not raise here. Others were summarily adverted to in the briefs, without the benefit of oral argument. This was out of respect for the familiar rules applicable to the scope of this Court's appellate review, in light of the narrow ruling by the Court of Appeals. Yet these issues require plenary consideration if justice is to be done.

For brevity's sake, we refer to but a few of the errors in the trial of this case, each of which requires a new trial.

#### **(1) The Meeting of Competition Defense.**

There was substantial evidence that respondent reduced its price to Signal Oil and Gas in order to meet the lower prices of Union Oil, a competitor. An officer of respondent testified that he was informed by Signal of a better offer from Union, and that as a result lower prices were given Signal to retain its business (A. 428, 432-433; A. 651).

Under this Court's decision in *Trade Comm'n v. Staley Co.* (1945) 324 U.S. 746, 759-760, it was not necessary for respondent to show that a lower offer had in fact been made—but only that it was reasonable to believe so, under the circumstances. This was a question for the jury.

The trial court, at the outset, properly outlined for the jury respondent's contention:

"In connection with this claimed defense, Standard contends . . . such lower price was extended by Standard in good faith and in the reasonable belief that it was thereby meeting the equally low or still lower price offered Signal Oil and Gas Company by one or more of Standard's competitors" (A: 63).

But it then went on to destroy this defense by the erroneous instruction that:



"Before the defense of good faith meeting of competition may be used by the defendant under the provisions of the law, *there must have been a definite offer which was extended by a competitor of defendant Standard to a customer of defendant and defendant must have been aware of such offer* \* \* \* " (emphasis added) (A. 64).

Further, the trial court refused to permit respondent to introduce records from Union's files that would have shown actual offers of lower prices to Signal. Such records, although dated after Standard's price reduction, would have corroborated the good faith belief of Standard that lower prices were being offered.

The Court of Appeals held both the exclusion of the evidence and the conflicting instructions to be prejudicial errors (A. 116-117). No other conclusion is possible. Petitioner's argument to the jury relied on the erroneous instruction, emphasized it, and urged the jury to find for petitioner even though respondent reduced its prices—as the uncontradicted evidence indisputably established—in good faith and in the reasonable belief that it was meeting the equally low or lower price offered to Signal by Union. Petitioner argued to the jury:

"I think you will find from the Judge's instructions that the requirements are quite strict. It cannot be just something in mid-air. It has to be normally an individualized situation. *It has to be an actual offer being extended in that particular time*" (emphasis added) (Tr. 6194).

and also:

"They must show you that *they were in fact meeting a bonafide competitive offer extended to Signal Oil and Gas as a justification* \* \* \* " (emphasis added) (Tr. 6188).

The erroneous instruction and exclusion of evidence went to the very heart of the defense, utterly depriving respondent of the single, most important and complete defense under the Robinson-Patman Act. A verdict so arrived at simply should not, in justice, stand.<sup>1</sup>

## (2) The Damage Computations.

(a) *Retail promotional allowances.* Petitioner was a wholesaler except for the operation of *one station* in Vancouver (A. 487). Nevertheless, the trial court permitted the jury to compute damages for claimed violations of sections 2(d) and 2(e), applicable only to promotional allowances at the retail level, on *all* of petitioner's gallonage. The court instructed (A. 65-67):

"In determining the amount of damage . . . you may consider . . . [t]he so-called restroom and maintenance allowances and the furnishing of credit card services.

"Also, any services or facilities furnished or agreed to be furnished by defendant Standard to Chevron or Signal dealers which were not accorded to plaintiff Clyde Perkins and the two Perkins corporations, or either of them, upon proportionately equal terms in accordance with these instructions."

Petitioner urged the jury to multiply the entire gallonage handled by his wholesale business as well as by his one retail station, by the estimated value of each of the benefits provided to respondent's retailers. For example, he argued:

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1. The error, of course, was not cured by the court's giving a contradictory and correct instruction (*Bollenbach v. United States* (1946) 326 U.S. 607, 611-612; *Pacific Greyhound Lines v. Zane* (9 Cir. 1947) 160 F.2d 731). This is especially true here where the jury was repeatedly urged by counsel to rely on the erroneous instruction (Tr. 6188, 6194).

"I think that one of the witnesses said it was approximately at one and three quarters cents value of their credit cards. If you multiply out our gallonage of claimed loss for that, you would come out with figures, I feel, a good deal higher than these that [the accountant] Mr. McDaniel has come up with. He has not included that type of figuring, because I believe the Court has advised that the jury is perfectly capable of doing its own sort of mathematics on its own power where you have credit card allowances and the testimony of one and three quarters cents per gallon, and you know our gallonage" (Tr. 6324).

Thus the jury was permitted and urged to multiply the promotional allowance, legally applicable only to petitioner's one retail station<sup>2</sup> by his entire 19,000,000 gallon purchases, virtually all of which were for his wholesale business. This was clear and prejudicial error unless, of course, this Court intends to overrule its holding in *FTC v. Fred Meyer, Inc.* (1968) 390 U.S. 341.

(b) *Schedule of damages.* On the asserted 2(a) price discrimination issue the trial court permitted petitioner to present to the jury a schedule which computed damages on the basis of a price differential in favor of Signal during a 16-month period on sales to petitioner in Portland which was only one of petitioner's 32 markets. The schedule computed damages by multiplying the 19 million gallons of gasoline sold to Perkins throughout his whole marketing territory during the entire two and one-half year claim period by the price differential which existed for about half the relevant period and in only the single market.

This faulty schedule went to the jury, with the instruction that, "The amount of price differential on gasoline" may be

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2. *FTC v. Fred Meyer, Inc.* (1968) 390 U.S. 341. And see opinion of the Court of Appeals on rehearing, A. 103-104.

considered by the jury in "determining the amount of damage . . . suffered" by Perkins (A. 65-66). No distinction was made between the limited amount of gallonage delivered in Portland on which there was a price differential and the millions of gallons delivered elsewhere.

The error was demonstrably prejudicial. Petitioner urged the jury to apply the Portland differential to his entire gallonage:

" . . . the fact is that when we talk about a tenth of a cent in this business, it is important, it is really important because of the quantities that were being purchased because when we project that over the sales that were being made by Clyde Perkins . . . around 19 million gallons . . . those quantities can be very substantial . . ." (A. 451).

(c) *Price war assistance.* The jury was allowed to compute damages for the entire claim period in an amount equal to the price war allowances to respondent's branded dealers. Yet (except for five dealers on one brand of gasoline for one week in Centralia, Washington) in no instance did these price allowances reduce the price to branded dealers below the price paid by Perkins.\* The trial court permitted the jury to award damages on account of this price war assistance even though the resulting net price to the retail dealers was higher than the price to Perkins. The trial court so erred because it improperly considered the price war assistance as a payment for a service within the mean-

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3. The statements of this Court that "Standard charged Perkins a higher price for its gasoline and oil than Standard charged to its own Branded Dealers" (slip opinion, p. 2), and that "Standard has admitted that it sold gasoline and oil to its Branded Dealers . . . at discriminatorily lower prices than those at which it sold to Perkins" (slip opinion, pp. 2-3) are inaccurate. There was no such concession, and the record is undisputed that except for the inconsequential occurrence mentioned in the text, the price to Perkins was *always* lower than the price to Standard's Branded Dealers.



ing of section 2(d). It instructed the jury that it could measure damages by:

"Any payments, subsidies, or allowances \* \* \* which were not available on proportionately equal terms to plaintiff Clyde Perkins or either of the two Perkins corporations or any of them in accordance with these instructions" (A. 66).

Again this error is demonstrably prejudicial. Petitioner argued to the jury:

"Now if you consider the nineteen million plus gallons that were sold to Mr. Perkins, if he had received the same subsidy, he would have received an additional \$190,000 \* \* \*" (Tr. 6154).

(d) *The 10 per cent sales increase factor.* The trial court permitted the jury to consider a damage item of \$168,251 based upon assumed increase in petitioner's business of 10 per cent per year (Exhibit 82-E, A. 531; 82-F, A. 533). The only basis in the record for this assumption was a provision in petitioner's contract with respondent limiting respondent's obligation to supply additional gasoline to petitioner during the contract period to 10 per cent per year. Petitioner argued to the jury:

"\* \* \* on the basis of what the business had done and on the basis of the contract formula, this 10% factor, that there would be an additional gallonage that would have been sold, and the average profit margin which would have been another \$168,251" (Tr. 6152).

As the court of appeals noted, there is no foundation whatsoever in the record for submitting this calculation to the jury (A. 115).

### (3) *Expert Testimony.*

Dr. Vernon Mund, Professor of Economics at the University of Washington, was called as an expert by petitioner. He was permitted to testify:

"On the basis of my studies and my examination of complaints filed with the Federal Trade Commission of the Department of Justice, I came to the conclusion that there is no genuinely free and open market in the sale of gasoline in particular at the primary and secondary wholesale levels, because the evidence indicates that anyone really isn't free to go and buy what he wants on the same terms and conditions available to anybody else or available to other people who are, in fact, buying. The proof of that statement is simply the fact that all these people complained that they couldn't buy. The evidence that they couldn't buy" (Tr. 2501).

He said he reached this conclusion on the basis of facts given him for study by government agencies in a "confidential way" on the condition that he was "never to reveal" the original sources (Tr. 2498-2499). The prejudice caused by this statement needs no elaboration. None of the "confidential" facts were in evidence or available to respondent for cross examination. To admit the opinion of a witness based on undisclosed facts or sources of fact is contrary to the most elementary standards of fair play, and is plain legal error. In *Raub v. Carpenter* (1902) 187 U.S. 159, this Court held (p. 161):

"Clearly the opinion of the witness from facts he did not disclose was inadmissible. If he knew anything about the deceased other than what he had stated, which aided him in arriving at a conclusion, that knowledge should have been developed. In that particular the question assumed the existence of facts for which there was no foundation in the evidence."

Of equal importance, when respondent attempted to test the abstract opinions of Dr. Mund against the actual economic conditions in the Pacific Northwest, respondent was prohibited from doing so, on the remarkable ground that

such cross examination was beyond the scope of the direct (A. 360). Thus the expert called by the petitioner was permitted to create an atmosphere of general prejudice and was protected against the requirement that he specify facts relevant to the lawsuit that would support his assertions.

### CONCLUSION

In the circumstances, respondent urges that this Court modify its opinion and, consistent with its usual practice, remand the case to the Court of Appeals for further proceedings in conformity with the Court's opinion. If the additional rulings of the Court of Appeals were made, as this Court apparently thought, only for the guidance of the trial court at a new trial, then, of course, the Court of Appeals will be free to order reinstatement of the jury's verdict. A remand, however, will give respondent an opportunity to be heard on the above—and other—issues, in the light of this Court's ruling on the section 2(a) question. More importantly, it will provide for a just result as between the parties.

Respectfully submitted,

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July, 1969

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that he is a member in good standing of the bar of this Court, that he has prepared the foregoing petition for rehearing and is familiar with its contents, and that respondent is presenting such petition in good faith, and not for delay.

Dated this 7th day of July, 1969, at San Francisco, California.

/s/ RICHARD J. MACLAURY  
RICHARD J. MACLAURY

*Attorney for Respondent,  
Standard Oil Company of California*





# SUPREME COURT OF THE UNITED STATES

No. 624.—OCTOBER TERM, 1968.

Clyde A. Perkins, Petitioner,	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
v.		
Standard Oil Company of California.		

[June 16, 1969.]

MR. JUSTICE BLACK delivered the opinion of the Court.

In 1959 petitioner, Clyde A. Perkins, brought this civil antitrust action against the Standard Oil Company of California seeking treble damages under § 2 of the Clayton Act, as amended by the Robinson-Patman Act,<sup>1</sup> for injuries alleged to have resulted from Standard's price discriminations in the sale of gasoline and oil during the two-year period from 1955 to 1957. In 1963, after a lengthy and complicated trial, the jury returned a verdict for Perkins and assessed damages against Standard of \$333,404.57, which, after trebling by the court and after the addition of attorney's fees, resulted in a total judgment against Standard of \$1,298,213.71. On review, the Court of Appeals for the Ninth Circuit held that the

<sup>1</sup>Section 2 of the Clayton Act, as amended, 49 Stat. 1526, 15 U. S. C. § 13, provides in pertinent part as follows:

"Sec. (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: . . ."

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assessment of damages included injuries to Perkins that were not not recoverable under the Act and therefore ordered a new trial. *Standard Oil of California v. Perkins*, 396 F. 2d 809. We granted certiorari to determine whether the Court of Appeals, in reversing the judgment, had correctly construed the Robinson-Patman Act.

Petitioner Perkins entered the oil and gasoline business in 1928 as the operator of a single service station in the State of Washington. By the mid-1950's he had become one of the largest independent distributors of gasoline and oil in both Washington and Oregon. He was both a wholesaler, operating storage plants and trucking equipment, and a retailer through his own Perkins stations. From 1945 until 1957, Perkins purchased substantially all of his gasoline requirements from Standard. From 1955 to 1957 Standard charged Perkins a higher price for its gasoline and oil than Standard charged to its own Branded Dealers,<sup>2</sup> who competed with Perkins, and to Signal Oil & Gas Co., a wholesaler whose gas eventually reached the pumps of a major competitor of Perkins. Perkins contends that Standard's price and price-related discriminations against him seriously harmed his competitive position and forced him, in 1957, to sacrifice by sale what remained of his once independent business to one of the major companies in the gasoline business, Union Oil.

Many of the elements of liability on the part of Standard are not in dispute. Standard has admitted that it sold gasoline and oil to its Branded Dealers and to Signal Oil at discriminatorily lower prices than those at which

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<sup>2</sup> Branded Dealers were independent operators of Standard's Signal and Chevron stations who marketed gasoline and oil under Standard's brand names. During the claim period the Signal Branded Dealers had no connection with Signal Oil & Gas Company, which is involved in this litigation as a wholesaler.

it sold to Perkins. The Court of Appeals found that Standard's liability for the harm done Perkins by the favorable treatment of the Branded Dealers was beyond dispute. Of this aspect of the damages, the Court of Appeals said:

"The Branded Dealers purchased gasoline and oil from Standard which they in turn sold at retail. With respect to them, Perkins' story is quickly told. Because of Standard's price favoritism and discrimination they were able to and did offer lower prices and better services and facilities than Perkins in marketing at retail." 396 F. 2d, at 812.

With regard to Perkins' damage resulting from Standard's discrimination in favor of Signal Oil, however, the Court of Appeals took a different view because of the following circumstances under which the discriminatory sales were made. Standard admittedly sold gasoline to Signal at a lower price than it sold to Perkins. Signal sold this Standard gasoline to Western Hyway, which in turn sold the Standard gasoline to Regal Stations Co., Perkins' competitor. Perkins alleged that the lower price charged Signal by Standard was passed on to Signal's subsidiary Western Hyway, and then to Western's subsidiary, Regal. Regal's stations were thus able to undersell Perkins' stations and, according to Perkins, the resulting competitive harm, along with that he suffered at the hands of Standard's favored Branded Dealers, destroyed his ability to compete and eventually forced him to sell what was left of his business. The Court of Appeals held, however, that any harm suffered by Perkins from impaired competition with Regal stations was beyond the scope of the Robinson-Patman Act because Regal was too far removed from Standard in the chain of distribution. A substantial part of the damages the jury assessed against Standard, as the Court of Appeals viewed it, might have been based upon a finding that

Perkins suffered competitive harm from the price advantage held by Regal stations. That court, concluding that "the whole verdict is tainted, since the amount reflected in it by Regal's conduct cannot be ascertained, . . ." reversed the judgment and ordered a new trial. 396 F. 2d, at 813.

We disagree with the Court of Appeals conclusion that § 2 of the Clayton Act, as amended by the Robinson-Patman Act, does not apply to the damages suffered by Perkins as a result of the price advantage granted by Standard to Signal, then by Signal to Western, then by Western to Regal. The Act, in pertinent part, provides:

"(a) It shall be unlawful for any person engaged in commerce, . . . either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: . . ."

The Court of Appeals read this language as limiting "the distribution levels on which a supplier's price discrimination will be recognized as potentially injurious to competition." 396 F. 2d, at 812. According to that court, the coverage of the Act is restricted to injuries caused by an impairment of competition with (1) the seller ["any person who . . . grants . . . such discrimination"], (2) the favored purchaser ["any person . . . who knowingly receives the benefit of such discrimination"], and (3) customers of the discriminating seller or favored purchaser ["customers of either of them"]. Here, Perkins' injuries resulted in part from impaired competition with a customer (Regal) of a customer (Western Hyway) of the favored purchaser (Signal). The Court of Appeals



termed these injuries "fourth level" and held that they were not protected by the Robinson-Patman Act. We conclude that this limitation is wholly an artificial one and is completely unwarranted by the language or purpose of the Act.

In *FTC v. Fred Meyer, Inc.*, 390 U. S. 341 (1968), we held that a retailer who buys through a wholesaler could be considered a "customer" of the original supplier within the meaning of § 2 (d) of the Robinson-Patman Act, a section dealing with discrimination in promotional allowances which is closely analogous to § 2 (a) involved in this case. In *Meyer*, the Court stated that to read "customer" narrowly would be wholly untenable when viewed in light of the purposes of the Robinson-Patman Act. Similarly, to read "customer" more narrowly in this section than we did in the section involved in *Meyer* would allow price discriminators to avoid the sanctions of the Act by the simple expedient of adding an additional link to the distribution chain. Here, for example, Standard supplied gasoline and oil to Signal. Signal, allegedly because it furnished Standard with part of its vital supply of crude petroleum, was able to insist upon a discriminatorily lower price. Had Signal then sold its gas directly to the Regal stations, giving Regal stations a competitive advantage, there would be no question, even under the decision of the Court of Appeals in this case, that a clear violation of the Robinson-Patman Act had been committed. Instead of selling directly to the retailer Regal, however, Signal transferred the gasoline first to its subsidiary, Western Hyway, who in turn supplied the Regal stations. Signal owned 60% of the stock of Western Hyway; Western in turn owned 55% of the stock of the Regal stations. We find no basis in the language or purpose of the Act for immunizing Standard's price discriminations simply because the product in question passed through an additional formal exchange before



reaching the level of Perkins' actual competitor. From Perkins' point of view, the competitive harm done him by Standard is certainly no less because of the presence of an additional link in this particular distribution chain from the producer to the retailer. Here Standard discriminated in price between Perkins and Signal, and there was evidence from which the jury could conclude that Perkins was harmed competitively when Signal's price advantage was passed on to Perkins' retail competitor Regal. These facts are sufficient to give rise to recoverable damages under the Robinson-Patman Act.

Before an injured party can recover damages under the Act, he must, of course, be able to show a causal connection between the price discrimination in violation of the Act and the injury suffered. This is true regardless of the "level" in the chain of distribution on which the injury occurs. The court below held that as a matter of law, "section 2 (a) does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distribution ladder as Regal was from Standard." 396 F. 2d, at 816. As we have noted above, we do not accept such an artificial limitation. If there is sufficient evidence in the record to support an inference of causation, the ultimate conclusion as to what that evidence proves is for the jury. *Continental Co. v. Union Carbide*, 370 U. S. 690, 700-701 (1962). Here the trial judge properly charged the jury that Perkins had the burden of showing that any damage to his business was proximately caused by Standard's price discriminations and there was substantial evidence from which the jury could infer causation. There was evidence that Signal received a lower price from Standard than did Perkins, that this price advantage was passed on, at least in part, to Regal, and that Regal was thereby able to undercut Perkins' price on gasoline. Furthermore,

there was evidence that Perkins repeatedly complained to Standard officials that the discriminatory price advantage given Signal was being passed down to Regal and evidence that Standard officials were aware that Perkins' business was in danger of being destroyed by Standard's discriminatory practices. This evidence is sufficient to sustain the jury's award of damages under the Robinson-Patman Act.

One other minor group of damages was found to be improper by the Court of Appeals and we conclude that this ruling was also erroneous. Perkins submitted some evidence tending to show that he as an individual had suffered financial losses because the two failing Perkins corporations (Perkins of Washington and Perkins of Oregon) were unable to pay him agreed brokerage fees for securing gasoline, rental on leases of service stations, and other indebtedness. The Court of Appeals, in order to give guidance to the trial judge at its proposed new trial, noted that, in its opinion, these damages were not proximately caused by Standard's violations and that Perkins should not recover for these damages in a second trial. For this proposition the Court of Appeals cited *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 363, which held that "the rule is that one who is only *incidentally* injured by the violation of the antitrust laws,—the bystander who was hit but not aimed at,—cannot recover against the violator.'" It is clear in this case, however, that Perkins was no mere innocent bystander; he was the principal victim of the price discrimination practiced by Standard. Since he was directly injured and was clearly entitled to bring this suit, he was entitled to present evidence of all of his losses to the jury. Moreover, it is obvious from the opinion of the Court of Appeals that this question was being decided not because there was any reversible error at the first trial, but in order to give guidance for the conduct of any new trial.

The record in this case does not show that the jury included an award for any of these minor items in its judgment. It is impossible to say that they were included because they were not covered in the trial judge's charge to the jury. While the trial judge treated many items of damage specifically, there was no charge—either specific or general—upon which the jury could have felt free to include such items in its award. For this reason, the Court of Appeals could not have reversed the jury's verdict in this case on this ground.

Respondent has argued in its brief several minor trial rulings which it contends were in error. Most of these additional arguments were rejected by the Court of Appeals. We have examined the others and find them without merit. We therefore see no need to prolong this litigation which began nearly 10 years ago. The jury's verdict and judgment should be reinstated.

*It is so ordered.*

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

# SUPREME COURT OF THE UNITED STATES

No. 624.—OCTOBER TERM, 1968.

Clyde A. Perkins, Petitioner,	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
v.		
Standard Oil Company of California.		

[June 16, 1969.]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART joins, concurring in part and dissenting in part.

I agree with the Court that the judgment of the Court of Appeals cannot be affirmed. But I cannot agree either with the broad, and somewhat vague, ground of decision chosen by the Court or with the conclusion that the jury verdict in this case must be reinstated.

As I view it, this case poses only a very narrow question. Respondent discriminated in price in favor of Signal Oil & Gas Co. Through a chain of majority-owned subsidiaries, Signal marketed this gasoline at stations which competed with petitioner's outlets. Since we are dealing with a chain of majority-owned subsidiaries, it seems quite likely that the discriminatory price given Signal would have a vital effect on the pricing decisions of the stations which eventually marketed Signal's gasoline. Even if the lower price were not passed on to the company marketing the gasoline, that company would be more willing to accept losses in a protracted price war if it knew that its "grandfather" corporation were making some extra, and partially offsetting, profits. For this reason, and since in interpreting the antitrust laws "[w]e must look at the economic reality of the relevant transactions," *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U. S. 199, 208 (1968), I would treat Signal, the beneficiary



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of the discriminatory price, as if it were directly competing with petitioner's stations. Respondent's price discrimination, on this view, in effect injured competition with a company which "knowingly receive[d] the benefit of such discrimination," Clayton Act § 2 (a), 38 Stat. 730, as amended by the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C. § 13 (a), and the case could properly go to the jury for determination of "causation" and damages. Accordingly, I see no reason to intimate, even by indirection, what the result would be if wholly independent firms had intervened in the distribution chain. I would therefore explicitly limit the holding to the facts of the case before us.

Moreover, I see no reason for the Court to undertake the difficult task of sorting out all the other issues in this case. The Court of Appeals based its reversal solely on its view of the "fourth line injury" problem. Other issues were treated on the assumption that the case would have to go back for trial. The record in this case is long and complicated and we have no idea what view the Court of Appeals would have taken about respondent's other allegations of error had the major prop for its decision been removed. The law under the Robinson-Patman Act is convoluted enough without the addition of numerous explicit and implicit holdings which may come back to bedevil us in future years. I would leave these other problems unresolved so that the Court of Appeals can look at them anew in the context of this Court's holding on the major issue of general importance presented by the petition for certiorari.



